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LORD CHIEF JUSTICE KENYON & WIFE.

THE LIFE

OF

LLOYD, FIRST LORD KENYON,

LORD CHIEF JUSTICE OF ENGLAND.

BY THE

HON. GEORGE T. KENYON, M.A.

CHRIST CHURCH, OXFORD.

21489
ac.

WITH PORTRAITS.

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PREFACE.

THE publication of another Life of LORD KENYON may perhaps require an apology.

Shortly after his death, a literary man expressed a wish to become his biographer; but his son, the second Lord Kenyon, was dissuaded from giving his countenance to the undertaking, by his father's successor, Lord Chief Justice Ellenborough.

'I feel an anxiety,' writes that nobleman, 'that so delicate and important a subject as the writing of the history of the life of my virtuous and very learned predecessor should not be committed to any but the most able, judicious, and respectable hands. . . . Your Lordship may remember how very little Lord Mansfield's celebrity was advanced by the indiscreet Life of him by Holliday.' [1]

This advice was taken, and no authorised Life of Lord Kenyon appeared till the publication of Mr. Townshend's 'Lives of Twelve Eminent Judges.'

With some inaccuracies, the character of the eminent Judge was here fairly and impartially drawn; and had

[1] Lord Ellenborough to 2nd Lord Kenyon, 1804.

the picture thus presented been allowed to remain undaubed by other artists, these pages would probably never have seen the light.

But in 1855, Lord Campbell, then at the height of his judicial reputation, published the third volume of his 'Lives of the Chief Justices;' and while borrowing largely from Townshend, so exaggerated and distorted his facts, that it became impossible to allow a biassed estimate of the character of a great and good man to remain unchallenged.

Lord Campbell's qualifications as a biographer have been frequently arraigned.

On the first publication of his 'Lives of the Chief Justices,' he was very roughly handled in the 'Law Magazine' and other reviews.

'We regret,' says the writer in the Law Magazine, 'that Lord Campbell should have considered it necessary to introduce anecdotes of pure surmise, ill suited to the refined taste of the age, and unnecessary for any historical purpose.' . . . .

'Lord Campbell has confounded, or not rightly understood, the distinction between true and false. . . His political virus oozes out in sly general remarks and bantering innuendoes.'[1]

I do not think that posterity will ratify Lord Campbell's condemnation of Lord Kenyon's character, but I have felt it a duty, which, as one of his descendants, I owe to his memory, to give to the world

[1] *Law Magazine*, vol. 43, p. 5, 209.

all the facts in the possession of the family, which may enable the public to form an impartial opinion as to his merits. I have inserted much also which relates to the more eminent of his many illustrious contemporaries.

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LIFE

OF

LORD KENYON.

CHAPTER I.

Introductory—Family of Kenyon—Birth and Early Life of Lord Kenyon.

(1732—1755.)

1732.

THE latter part of the eighteenth century was singularly rich in great lawyers. The names of Dunning and Camden alone would be sufficient to irradiate the age in which they lived; and when the same era can boast the forensic pre-eminence of an Erskine, the classical perspicuity of a Mansfield, the force and fire of a Thurlow, and the judicial acumen of an Eldon, a gallery of distinguished men is presented such as perhaps no similar period of time can furnish.

It is an exalted standard, therefore, by which the subject of this biography must be estimated, and an impartial judge will not hesitate to acknowledge his extraordinary merits, because he was deficient in some of the more brilliant characteristics which adorned his contemporaries. There is no greater error in biography than to attempt to enhance the excellence of a character by suppressing its faults. Such a process is like the bad restoration of a picture, which deprives it

CHAP. I. 1732.

of all light and shade. A purely negative character is as insipid a study as the lay figure of a painter.

On the other hand, it must be confessed that some biographers have attempted to season their books by a gross exaggeration of the personal peculiarities and failings of their heroes, and by the insertion as authentic narrative of the gossiping political anecdotes of the day. There is no temptation more dangerous to a biographer than anecdote. A great writer has said that 'all anecdotes are false, and all dealers in anecdotes tainted with mendacity.' 'Rarer than the phœnix,' he continues, 'is that virtuous man who will consent to lose a prosperous anecdote on the consideration that it happens to be a lie.'[1]

If I am enabled to some extent to avoid the above severe condemnation in the following pages, it will be because I feel sensibly how unfairly Lord Kenyon's name has been handled by such a method of treating character: a feeling which I have reason to believe is shared by a large number of persons by whom his great attainments and his personal worth are still held in high estimation.

The family of Kenion or Kenyon is of Saxon origin, and was settled in Lancashire as early as the reign of Henry III. In the year 1154, as appears from manuscripts still in existence, one Adam de Loton or Lauton, residing near Newton-in-the-Willows, in the Hundred of Makerfield, was lord of Kenyon. His son William married the daughter of Hugh de Winique, and by her had issue, Jordan and two daughters. To Jordan his father made over the lordship of Kenyon, in right of which he was styled (1249), in accordance with the cus-

[1] De Quincey's Works, vol. iv. p. 265.

tom of those days, Jordan de Kenyon. In the fifth generation, however, (1359), the lordship was carried off by an heiress, Almerica, or Ameria, who married Richard, son of Thurstan Holland, of Heaton, near Manchester. CHAP. I. 1732.

From this alliance were descended the Hollands of Heaton, in the county of Lancaster, through whom the lordship of Kenyon passed (1684) to the family of Egerton, of Heaton and Wrine Hill, now represented by the Earl of Wilton.[1]

The Kenyons deduce their pedigree in the male line from Gilbert,[2] uncle of Almerica, whose descendants resided for several generations at Dinckley and other places in Lancashire, where they held sundry small offices.

One of these, Roger Kenyon, married, towards the year 1600, a daughter of Richard Assheton, head of the old Lancashire family of Assheton of Chadderton, and settled at Parkhead, near Blackburn. He appears to have been a man of some consequence in his own county. The quaint epitaph which records his virtues may still be seen in Whalley Church :—

Here sleeps Mr. Roger Kenyon, who was the mirror of his time for wit, valour, peace-making and charity.
Hee
Departed this life the 14th of August, anno Domini 1636, in the 52nd year of his age :
Leaving
Jane, his loving wife, and six children, viz., Ann, Dorothy, Jane, Roger, Edward, and Alice, to lament their loss.
ROGERUS KENYON.
EVERY KROS GONN.

If the peacemaker be pronounced blest,
Of how great glory is his soul possest,
Whose worth did ever sett all foes at one,
And now's himself at peace, each cross is gone.

[1] Family MSS. Cf. also Baines' Lancashire, vol. iii. pp. 634, 635 ; Gregson's Fragments, &c., pp. 40, 43, Appendix.

[2] Otherwise Matthew.

CHAP. I. 1732.

His son, Roger Kenyon the younger, further improved the circumstances of his family, by marrying Alice, daughter of George Rigby, of Peel Hall, near Bolton, clerk of the peace for the county palatine.[1] (1657).

On the death of his father-in-law, Roger inherited Peel Hall, which thenceforward became the seat of the family. He was Member of Parliament for the borough of Clitheroe from 1685 to 1691, and Deputy-Governor of the Isle of Man under the ninth Earl of Derby, whose confidence, if we may judge from a curious mass of correspondence which has been preserved, he seems to have enjoyed in no ordinary degree.

Through the Rigbys also Roger obtained the office of clerk of the peace for the county palatine, a lucrative place, the reversion of which the Kenyons contrived to retain in the family for several generations. By the influence, probably, of Lord Derby, he obtained for his nephew the position of court physician to James, the First Pretender. Dr. Kenyon resided for many years at the court of St. Germains, where he was on terms of intimacy with the chaplain, the celebrated Dr. Leslie, who dedicated to him the last edition of his theological works.

Roger was succeeded in the family estates by his eldest surviving son George, who was Member of Parliament for the borough of Wigan from 1710 to 1714. He was a strong Jacobite, and was to some extent implicated in the plots and counterplots of that date.

[1] Rogeri Kenyon, Gent. et Aliciæ Rigby nuptiæ celebrat. 17 Jun. 1657 secund. Canon. Ecclesiæ, pr. me Gul. Moore. Vic. de Whalley— 1660. Repudiatus est Justiciar. Restituit Vicar. (Extracted from Register.)

CHAP. I.

1732.

His brother was bold enough to disregard the politics of his family by marrying the daughter of a prominent Roundhead. This was one Luke Lloyd, who owned a small property at the Bryn, in Hanmer Parish, in the county of Flint. He had been in his youth a staunch Cromwellite, and had served with some distinction in the revolutionary war.

Thus he writes from the army, in 1644, to his wife :—

'Wassall, June 13, 1644.

'Love,—Thyself and father taxeth me with breach of promise. Such promise I never made, but upon condition I might live a freeman at home, and enjoy thee and thine and a good conscience. When thy foot-post came to me, we were preparing to defend ourselves, and had no time to write to thee: for the enemy appeared then to us in a very great body, and we raising the siege and preparing for our march towards Stafford, thy foot-post I hasted away. When at Stafford, shee arrived, with many runaways of horse, that reported to the governor there we were all lost men. Truly had not God fought for us, it had been so: for they were, by the confession of those prisoners we took, between 4,000 and 5,000 strong, and we not 2,000. They fell upon our rear before we could begin to march: only our fore horse advanced: they assaulted us a quarter of a mile this side the Leager, with such fury that had not our men behaved very gallantly we had been utterly defeated; but they were encountered so sharply that they were fain to retreat towards the Saftod, and were so handsomely beaten they had no minds to come on again. We slew about thirty of their men, whereof some of note, and one, they wished his

CHAP. I. 1732.

Majesty had been killed rather than he (you may perceive by this their love to his Majesty), and very many ill wounded and dangerously. All the flower and the greatest part of the King's forces were in this body: there was the King's General of Horse, the Lord Willmott, the Earl of Cleveland. The King and the poor remainder of his forces is at Worcester, where Sir W. Waller is advancing. Sir William, hearing of the enemy coming to raise our siege, sent 2,000 horse to our relief, who came not till the next morning; had they come in time, by God's help, we had given the enemy a great defeat; but not knowing of their coming, we durst not pursue them, not being so considerable in strength, and the place affording the enemy many advantages. I shall give a further account when I see thee, or by letter when we come to Nantwich. I pray God bless thee and thyne.

'I rest thyne,

'LUKE LLOYDE.'[1]

In later life Luke Lloyd became a great friend and associate of the celebrated divine, Philip Henry, in company with whom he was imprisoned in Charles the Second's reign, for non-conformity.

Philip Henry thus alludes to his death in an interesting manuscript, which has been carefully preserved by his descendants:

'Luke Lloyd, Esq., of Bryn, in Hanmer Parish, my aged worthy friend, finished his course with joy, March 31, 1695, being Lord's day. He was in the eighty-seventh year of his age, and had been married almost

[1] This skirmish seems to have been preliminary to the Battle of Cropredy Bridge (June 29). Cf. Clarendon, Book viii. pp. 491 and *sqq.*

CHAP. I.

1732.

sixty-nine years to his pious wife (a daughter of Mr. Whitley, of Aston), of the same age, who still survives him. He was the glory of the little congregation, the top branch, in all respects, of our small vine, and my friend indeed. When he made his will, under the subscription of his name he wrote Job xix. 25, 26, 27.'[1]

On this text of scripture, Mr. Henry, at the request of some of his relations, printed a sermon at the licensed house near Hanmer, some time after his funeral, in which sermon he bore a very honourable testimony to that worthy gentleman; who, as he said, went to heaven without a blot, held fast his integrity, and was lively and zealous in the Christian profession to the end of his days. He was exemplary for his love of the ordinances of God, and his delight in attending on them, his living upon Christ for strength and righteousness, his great humility and condescending, obliging carriage in all his converse. He was a man of great courage and resolution, and yet in prayer tender and self-abasing to admiration, often melting into tears in the confession of sin, and his charity and moderation were known to all men. He lived and died a pattern of piety and primitive Christianity, and still brought forth fruit in old age—his vigour, both of body and mind, being wonderfully preserved to the last; and by the grace of God, he finished well, and his sun set under no cloud. Such good men are intended to be to us as the star that led the wise men to Christ, and as far as they do so, we are to follow them. 'Mark the perfect man, and behold the upright, for the end of that man is peace.'[2]

[1] Philip Henry's Diary.
[2] Philip Henry's Life, by his son, p. 265.

CHAP. I. 1744.

By this marriage, which was concluded in the year 1668, Thomas Kenyon gained a long Welsh pedigree and a small Welsh estate, where he settled on the death of his father-in-law. The eldest son of the marriage, Lloyd Kenyon, married Jane, eldest daughter and heiress of Robert Eddowes, Esq., of Gredington,[1] Flintshire, and Eagle Hall, co. Chester, by whom he became the father of four sons and one daughter. The second son, who was born at Gredington on the 5th of October, 1732, was named after his father, and became successively Attorney-General, Master of the Rolls, and Lord Chief Justice of England.

Mr. Kenyon the elder resided principally at Gredington, where he occupied himself after the fashion of most country gentlemen of that date with farming, and drinking confusion to the Georges.

He was a ripe scholar, having been educated at St. John's College, Cambridge, and an active justice of the peace. His income, however, was but small, and, much to his regret, did not permit him to give his sons what would now be considered a liberal education.

Lloyd and his brothers were sent first to a day-school in the neighbouring village of Hanmer, where they learnt their accidence and the rudiments of Latin. The master there was shortly afterwards appointed to the flourishing grammar-school of Ruthin, where they accompanied him when Lloyd was about twelve years old. Dr. Hughes, the head master, was a good scholar, and was afterwards tutor to some of the Royal Princes.

[1] He had obtained Gredington, which originally belonged to the Hanmer family, by marriage with Ann, daughter of Rev. R. Hilton, Vicar of Hanmer.

He was appointed by Lord Kenyon to the only piece of ecclesiastical preferment he had to dispose of—the Preachership at the Rolls; and the King afterwards told Lord Kenyon that he had been beforehand with him in rewarding merit and showing attachment. CHAP. I. 1744.

Ruthin was a favourite foundation with the gentry of North Wales, many of whom were content with the good elementary education which could be had there at a moderate cost.

Amongst other celebrities the Welsh Lord Keeper Williams had received his education there, and more recently their roll can boast the names of Dean Tucker, the controversial writer, and Richards, Chief Baron of the Exchequer.

The curriculum at Ruthin appears to have been the same which flourished at most of our second-class schools during the last century. The younger scholars struggled through the mazes of King Edward the Sixth's Latin grammar; the elder boys read Horace, Virgil, and Ovid, and even dipped into the deeper mysteries of Lucretius.

Greek seems to have been a sealed study. French was taught, but with what success I am unable to say, though a fair translation of Racine's *Esther* into English verse by one of the boys, which has been preserved, appears to prove that the study was not quite such a farce as at some of our large public schools not long since. Mr. Kenyon afterwards became an apt French scholar, but it is possible that he owed this to his own exertions in after life. The boys were ambitious of poetic fame, but the only specimen which has been preserved does not show any remarkable talent in this line.

CHAP. I.

1744.

Here are a few couplets :—

Whilom as thro' the distant groves I stray'd,
And tender past'rals on my flag'let played,
The chirping birds in songs their joys express'd,
All nature in a gay attire was dress'd ;
Now this, now that, engag'd my ravish'd eyes,
Each object furnish'd matter of surprize ;
The reverend oaks their shady foliage spread,
And form'd a close umbrella o'er my head.

. . . . . .

The stately doors at length themselves unfold,
Studded with diamonds, made of burnished gold :
Beneath the vaulted roof, enthron'd on high,
The goddess Liberty attracts my eye ;
Nigh her the Bruti whom old Rome admir'd,
Whose patriot souls fair virtue always fir'd ;
With them Fabricius, Scipio; and a corps
Such as Romania now must see no more.
There were thy chieftains, Greece, in pomp array'd,
There, Aristides, sat thy mighty shade.
There England's Edwards, Henrys, Charles's stand,
Those patriot kings of a once happy land.
There Watkin stood firm to Britannia's cause,
Guard of her ancient honour and her laws.

. . . . . .

Then follows a long eulogy of the virtues of the Welsh hero,[1] which amusingly demonstrates the writer's fervid patriotism.

The two brothers were esteemed the best scholars at Ruthin. Among their intimates was Robert Salusbury Cotton, father of the first Lord Combermere.

Lloyd Kenyon remained at Ruthin about five years, when it became necessary for him to choose a profession. As a younger son, he could of course expect but little fortune, and like Lord Eldon and others, afterwards great lawyers, he turned a wistful eye towards holy orders and a family living.

The prospect of the latter, however, proved illusory.

[1] Sir Watkin Wynn.

and he finally chose the law. As a preliminary step to the woolsack, following the example of Hardwicke and Macclesfield, he was condemned to be chained for five years to the desk of an attorney, and was articled to a celebrated practitioner, a Mr. Tomkinson of Nantwich. The following year his elder brother died of the small-pox, and he became heir to the family property. He did not, however, relax his efforts, but continued at Nantwich, though sorely tempted by his friends to exchange the crabbed study of the law for the social enjoyments of college life. CHAP. I. 1749.

'As to myself,' he writes to his cousin, George Kenyon, 'I am, and shall for a considerable time continue, with a very eminent attorney in Nantwich; and as you know I had always, when at school, a great aversion to writing a deal, you will imagine that this profession was not at first very agreeable to me. However, time has made the yoke much less galling than it at first was.'

'With what patience,' rejoins his cousin, 'can you brook that confinement, which you so much complain of? Come, come to Oxford, and there excel in the polite arts and sciences, instead of troubling your head with solving cases of conscience and explaining the knotty quirks of the law to your troublesome clients.'

The life at Nantwich, a small country town, was at first very irksome, but the training was invaluable, and in after years Mr. Kenyon never regretted the time he had spent in mastering the technicalities of fines and common recoveries. In November, 1750, he was entered as a student at the Middle Temple, and forthwith began eating his dinners.

Meanwhile he opens his complaints to his friends:

CHAP. I. 1750.

'Instead of enduring less confinement than when at school, I have infinitely more. It's true, indeed, we've not that servile fear here which scholars so often are curbed by; but then we can very seldom escape out of this cursed office, Sunday excepted, nor is that always a day of rest. The authors and exercises which employed our hours afforded a pleasure to the reader, which highly compensated his labour, but the law is surely the most irksome and crabbed study of all other.' 'We are to have another new clerk,' he writes to his brother, 'who is above twenty-two years of age; but I think if we were a thousand, our good master would not let us be idle.'

'I am heartily sorry,' replies his correspondent, 'to hear you are at a loss for company; 'tis as great a want as any can be. Indeed, all y^e^ advantage of a University education is mainly this, y^t^ you are fixed in y^e^ midst of learning and learned men. For, my dear cousin, you must not have any high notion of our exercises: they are all but a farce. If a man chooses to read only, he may do it better in y^e^ country, where he is less likely to be called off. You can't imagine what a notion I had got of our disputations before I came. I thought it must be devilish hard to talk Latin and Logick for half an hour together. But "parturiunt montes," &c. I believe they scarce spoke a hundred words apiece. I am very glad to hear you are entered of the Temple.'

At Nantwich, Mr. Kenyon first showed signs of that wonderful quickness of perception, which was the prominent feature of his legal character. Before he left Mr. Tomkinson, he had become a rapid and accurate

conveyancer. He was a great favourite with his master, who had early perceived his ability. Their friendship, it is pleasing to be able to record, lasted till the end of Tomkinson's life, and in after years, the old attorney was a frequent visitor at the Chief Justice's table.

The life at Nantwich, though generally quiet enough, was not without occasional excitement. The young gentlemen of the long robe appear on one occasion to have come in collision with some officers from the neighbouring garrison town :—

'Since I last wrote to you,' writes Mr. Kenyon to his cousin, 'at an assembly in this town, an affair happened not very unlike what Manchester has of late been plagued with : for though no swords were lugged out, yet it was, I think, threatened by a parcel of heroes, none of whom were above the rank of an ensign, and the reason of all this disturbance was nothing more than a dance, which they were pleased to call a party. When vermin of so mean a rank as these begin to show their stings, what may not be expected from those of a superior stamp? It seems to me, and surely it is highly unreasonable that poor mean fellows, protected by a red coat or a cockade, should make that by their false construction treason, which the speaker never meant for such.' [1]

Another letter speculates on the representation of the county at the coming election : 'The conversation of most people hereabouts is taken up with fixing upon a proper person to succeed Mr. Crewe as member for the county ; and indeed almost every company one

[1] December 15, 1750.

CHAP. I. 1755.

hears talk on that subject finds out a new candidate: though either Mr. Grosvenor or Mr. Egerton of Tatton, as I believe, are generally looked upon as the most likely. We are busy preparing sessions papers.'[1]

The following, from a fellow-sufferer in the office, gives a melancholy account of the destitution of the then little town of Crewe:—

'There is no station of life free from the pester of rascals, that will for ever be making us uneasy. The "material man," I have discovered, is intrusted with the key of all the stores at Crewe, and not only suffers us to live in want, even of an inch of candle to light us to bed, but Mr. Sherwin and myself have been obliged to buy corn for our horses. We have, indeed, good plain wholesome food and small beer, but in many other respects, this house is an attested copy of the good "old house at Aston."'

Meanwhile, Mr. Kenyon's period of probation was drawing to a close, and in February, 1755, he bade farewell to Mr. Tomkinson and his office, and at once took up his residence in London. I have no record of his personal appearance at this time of his life.

As a child he had enjoyed indifferent health, and this, added to the Welsh blood in his veins, made him somewhat irritable and sensitive: a failing which through life he never completely overcame: but though hot-tempered, he was sociable and good-natured, and perfectly popular with his companions.

[1] Ll. K. to his brother, October 2, 1752.

CHAPTER II.

Life in London—Call to the Bar—John Dunning—Cumberland Election—Acquaintance with Pepper Arden.

(1755—1770.)

CHAP. II.

1755.

'THERE was my first perch,' said Lord Eldon, in the latter part of his life, pointing to a house in Cursitor Street. 'Many a time have I run down from Cursitor Street to Fleet Market, to get sixpennyworth of sprats for supper.'[1] With equal complacency might Lord Kenyon have passed a tumble-down house in Bell Yard, Carey Street, in 1755 the abode of one Mrs. Goodfellow, where for six shillings a week he for several years occupied a room on the second floor. His father gave him an allowance of eighty pounds a year, and this, with the exception of an occasional present from his richer relations, was for many years the entire amount of his income. His impecuniosity had the good effect of making work necessary to him—an additional and effective encouragement to study. It was easier, however, even in those days, when the Bar was much less crowded than at present, for a young man to study the law, than to turn his labour to any profitable account: and Kenyon had none of the advantages which many of his contemporaries enjoyed: Unknown, without interest or powerful connections,

[1] Life of Lord Eldon, by Hor. Twiss, vol. i. p. 96.

CHAP. II. 1756.

gifted with none of the charm of manner which at once brought Erskine into notice, rough and unpolished, the young student had indeed an uphill task before him.

Nothing but the greatest energy and perseverance could have surmounted the obstacles in his path. But these qualities he possessed in a high degree. He had made up his mind to succeed, and herein lay the secret of his success. Early and late he pored over the dusty volumes of Coke and Sheppard, and his savings were scrupulously applied to the enlargement of his scanty library.

At length, on February 10, 1756, after a year's residence in London, he was called to the Bar by the Hon. Society of the Middle Temple; but for several years he was almost unemployed. As a diversion he began to attend the Court of King's Bench, and to take notes of the cases argued there before Lord Mansfield, then commencing his long and splendid judicial career. Many years afterwards some of these quasi-reports were collected and published. They are for the most part more notes of cases than actual reports, but they are clearly put together and show that their author must even thus early have attained to considerable proficiency in his craft. A just compliment was paid them by Lord Mansfield some years later, on the trial of a case before him in *Banco Regis*. Referring to the case of Goodman *v.* Goodright, he said that he had founded his decision on a report of that case by Sir James Burrow, but that he had since seen a manuscript note taken by Kenyon, which assigned a different ground for the determination, and that he should like

to have the case re-argued. This was accordingly done, and Lord Mansfield eventually changed his mind.[1]

1759.

His friends, meanwhile, who knew his abilities, encouraged him to persevere. The following good advice is from his kinsman, Thomas Percival, of Rowton in Lancashire :—

'Tho' I am enlisted amongst the men of speculative learning, I would have all my relations and friends enrolled amongst the men of business, and have every one of them aspire to be at the top of his profession, and it is but, as L^d^ Somers said, a man making a resolution he will be Chancellor of England, and he will be so. By resolution he means endeavours as well as inclination to be so, and therefore I advise you as a friend to make that resolution in time, for the sooner you make it the more likely you will be to obtain it.

'The glorious success of this year I ascribe solely, under God, to Mr. Pitt, for you must know that I have a most despicable opinion of the heads and hearts of the Junto. I often reflect with anguish on those pseudo-patriots at White's. As old Hardy said formerly, he feared that set would ruin the nation. I am so very much of his opinion that I could almost wish to act one winter in Middlesex in the commission of the peace, to rout them: for I much fear they will contrive to sell that they could not obtain by their own counsels.'

Two or three letters from his brother, relating to the political transactions of the day, will not be out of place here. The writer, Roger Kenyon, was the youngest son, and was brought up as a solicitor, in

[1] Douglas Reports, p. 489.

CHAP. II.

1759.

which branch of the profession he attained considerable eminence :—

Roger Kenyon, Esq., to Lloyd Kenyon, Esq.

(Extract.)

'Sir John Glynne has speeched it away last week in support of the Triennial Bill, and they say pretty sensibly, but the motion was rejected again by a great majority. Pitt had got the gout and did not attend, and Beckford is much blamed for making the motion at so improper and unexpected a time. . . .

'Jones [1] sets out to-morrow on horseback I believe, as does Dunning, on the Western Circuit. The Ha. Co. Bill is ordered to be brought into the House, but much opposition by Mr. Soll[or] and Norton, till Pratt [2] undertook them, who answered the former, and cut the latter very severely.'

The Same to the Same.

(Extract.)

'March 19, 1758.

'The Hab. Corp. Bill was read a 2nd time on Friday, and hot work ensued.[3]' Wilbraham made a speech above an hour long against it, in which he enumerated the happy situation, and many blessings he enjoyed in a dutiful son and daughter, with other things as pertinent to the question; but Mr. Pitt soon cut down the applewoman and handled him most severely. Pratt opposed the Soll[or], and Beckford [4] roared out loudly *that the Writ was a writ of Right, and of too much*

[1] *Afterwards the celebrated Sir W. Jones.*

[2] *Afterwards Lord Chancellor Hardwicke.*

[3] A Bill to amend the Habeas Corpus Act. Cf. Life of Lord Hardwicke, Lord Campbell's Chancellors, vol. vi. p. 278.

[4] The celebrated Alderman Beckford, Lord Mayor of London, died June 21, 1770.

consequence to be denyed at the option of a foolish or time-serving judge, many of whom were incapable of judging when it should be granted; and others so audacious and arbitrary that (he had heard) they had not scrupled to show their lust of subverting our freedom by breaking in upon the institution of juries and extorting a verdict in direct opposition to their consciences (meaning the late Trial of the *Monitor*): tho' some of the jurymen had signified their doubts and refused to find it, they had several times been sent from the Bar with this memorable order, "That they must find the defendant guilty." In all probability this Act will pass through the Lower House, but for the other, I much question it.'[1]

Kenyon's early practice was confined almost entirely to conveyancing business, in which, from his experience at Tomkinson's, he was comparatively expert. He did not find it very profitable, and to aid his finances he began to ride the North Wales circuit, where he was able, from his acquaintance with the neighbouring gentry, to pick up a few guineas. His old tutor did his best for him, and obtained him what business he could; but for many years this can hardly have paid his expenses. After a time he began attending the sessions at Stafford, Oxford, and Shrewsbury, where he was more successful. He would generally stop a few days *en route* with his parents at Gredington, and by chance was employed by some of the neighbouring gentry to give an opinion or to draw a settlement.

Amongst others, Sir Lynch Cotton, grandfather

[1] It was shelved in the House of Lords.

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of the first Lord Combermere, had early perceived his abilities, and through his influence the young barrister was employed in several cases in which Sir Lynch was locally interested. By degrees the attorneys found out that his work was rapidly and accurately done, and his fee-book began to show a considerable increase. It was while his eventual success was thus trembling in the balance that the good offices of a friend decided the scale. Kenyon's earliest friends were Filmer and Davenport. About the year 1759 he first struck up an acquaintance with John Dunning, afterwards Lord Ashburton. In those days the lawyers used generally to dine early, and to spend the evenings in company at one of the numerous taverns in the neighbourhood of the Temple. At Nando's or Serle's, the 'Trumpet' in Shoe Lane, or the 'Crown and Anchor' in Arundel Street, the barrister, whose purse was not very well lined, could pass a pleasant evening at a very trifling expense.

It was at one of these symposia that a friendship was established between Kenyon and John Dunning, which lasted, without interruption, till the death of the latter in 1782. The two friends were especially intimate with John Horne Tooke, whose biographer gives an amusing account of their mode of life. 'These three, while students, and little dreaming as yet of their future fortunes, were accustomed to spend much of their time together.

'Two of them, as has been hinted, afterwards attained patrician honours, but at the period now alluded to, the prospects of the third were to the full as promising as those of his fellow-students. He,

indeed, must have been looked up to as a superior character, for, in addition to his natural talents, he had been educated at the public schools, and finished his studies at a celebrated university, while they were brought up at little provincial seminaries and could not boast of any classical attainments whatever. It would appear, however, that none of the parties were very rich at this period, for they lived with a degree of frugality that will be deemed rather singular when contrasted with their future wealth and celebrity. They used generally, in vacation time, to dine together at a small eating-house near Chancery Lane, where their meal was supplied to them at the charge of 7½*d.* a head. Tooke, in giving an account of these repasts many years after, used to say, "Dunning and myself were generous, for we gave the girl who waited on us a penny a piece, but Kenyon, who always knew the value of money, rewarded her with a halfpenny, and sometimes with a promise."[1] The friendship with Horne Tooke did not last long. That eccentric genius went abroad, and on his return took orders, and the quondam allies probably never met again till, in 1792, the Rev. J. Horne Tooke appeared before Lord Chief Justice Kenyon as defendant in an action at the suit of Mr. Fox. The friendship of Dunning, on the contrary, was productive of great advantage to Kenyon. This talented man, who was a year older than his friend, had been called to the Bar about the same time. For many years he had remained almost unemployed. From a comparison of their fee-books, which I subjoin, it will be seen that, until the year

[1] Stephen's Memoirs of Horne Tooke, p. 32.

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1762, Dunning was very little the better off of the two. [1]

In the course of that year one of 'the leaders on the Northern Circuit was suddenly attacked with a fit of the gout, and placed his briefs in the hands of Mr. Dunning, who conducted himself so ably that his practice began rapidly to increase.' [2]

His reputation was confirmed by his celebrated argument against general warrants, and in 1764, he was making 2,000*l.* a year.

This success was attained by a man who laboured under many disadvantages. 'Never perhaps,' says Wraxall, 'did nature enclose a more illuminated mind in a body of meaner or more abject appearance. It is

[1] The following statement of the comparative sums made by Dunning and Kenyon at the Bar is from the Diary :—

Mr. Dunning called to the Bar . . . 1755
Mr. Kenyon called to the Bar . . . 1756

	Dunning. £ s. d.	Kenyon.
1757 .	13 13 0	
1758 .	45 3 0	
1759 .	134 8 0	
1760 .	89 5 0	
1761 .	184 15 0	
1762 .	640 16 0	
1763 .	753 10 0	£ s. d.
1764 .	2,015 13 0	80 0 0
1765 .	3,093 18 0	217 0 0
1766 .	4,008 11 0	373 13 0
1767 .	5,341 9 0	506 9 6
1768 .	6,096 11 0	922 4 0
1769 .	6,400 0 0	767 18 6
1770 .	8,014 19 0	1,124 14 0

	Dunning. £ s. d.	Kenyon. £ s. d.
1771 .	8,535 9 0	2,487 17 0
1772 .	No account	3,134 7 0
1773 .	,,	3,728 10 0
1774 .	,,	3,828 0 0
1775 .	,,	[1]4,225 3 0
1776 .	,,	5,008 8 0
1777 .	,,	5,028 3 0
1778 .	,,	5,438 17 0
1779 .	,,	5,693 2 0
1780 .	,,	[2]6,359 6 0
1781 .	,,	[3]7,437 6 0
1782 .	,,	[4]11,038 11 0
1783 .	,,	7,406 3 0
1784 .	till April 3 .	1,648 8 0

[1] Out of which for opinions, 931 guineas. [2] Ditto, 2,578 guineas.
[3] Ditto, 2,936 guineas. [4] Ditto, 3,020 guineas.

[2] Roscoe's British Lawyers, p. 288.

difficult to do justice to the peculiar species of ugliness which characterized his person and figure, though he did not labour under any absolute deformity of shape or limb . . . . Even his voice was so husky and choaked with phlegm, that it refused utterance to the sentiments which were dictated by his superior intelligence. But all these imperfections and defects of configuration were obliterated by the ability which he displayed. In spite of the monotony of his tones and his fatal want of animation, as well as grace, yet so powerful was reason when flowing from his lips, that every murmur became hushed, and every ear attentive.'[1]

This curious picture is borne out by the description of contemporary writers, and by the likenesses of him which have survived. His rapidity of thought seems to have been quite wonderful. 'Mr. Dunning,' says another reminiscent, 'was the quickest man I ever knew at the Bar. If an objection was to be taken or answered at Nisi Prius, he did it on the instant: his style of reasoning was sometimes too subtle for his hearers.'[2]

Dunning's acquaintance with Kenyon had convinced him of the great talents which the latter possessed, and with true friendship he encouraged him to persevere.

J. Dunning, Esq., to Lloyd Kenyon, Esq.

'M. Temple, London, September 30, 1762.

'Dear Sir,—Allow me to interrupt your amusements for a moment. I write only to tell you that I am very

[1] Wraxall's Memoirs, First Series, p. 41.
[2] Nicholl's Recollections, p. 345.

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much in want of your Notes, and to remind you of your promise to bring them to town with you, which, when you have this written memorandum by you, I trust you will not forget.

'Having already profited much, and being thus desirous of profiting still more, by your industry, gratitude as well as friendship induce me to wish that you wo^d put yourself in the way to profit by it as you ought. Let me press you, therefore, as I have often done, to return to us with a resolution to take or buy chambers, to become a regular settled lawyer. Nothing more, be assured, is wanting to place you in that rank in the profession which your friends think your due, and cannot without indignation see others less deserving usurp.

'In the meantime, shall I buy or sell any stock for you? That's the only business w^ch engages anybody's attention here at present. If you would buy, however, I wish I had had your commission before the intelligence of the important event which will be forwarded to you by this post, had raised the price; an event on which, as a lover of peace,[1] I desire to congratulate you. On the fate of this place, that of his Grace of Bedford's negotiation was understood to depend altogether. Had the attack miscarried, the Spaniard wo^d not have acceded, 'tis said, to any terms of accommodation: but the restoration of this important place, which he cannot otherwise recover, will, 'tis thought, engage his assent to any treaty, of which that is an article.

'I wish you a good session, and, indeed, all manner of

[1] Capture of the 'Havannah,' August, 1762.

good things; particularly a good fire, and whatever else can contribute to make your dreary climate comfortable, until the impossibility of continuing longer so near the Pole obliges you and the woodcocks to direct your course towards a warmer region, which I hope will not fail to be the case a month hence.

'Pray convey my comp^ts^ and good wishes to your brother, and believe me always,

'Your faithful friend and humble servant,

'J. DUNNING.'

The rising advocate was, however, able to give his friend more valuable assistance than good advice. No sooner were his own feet firmly planted on the ladder than he at once held out a helping hand to Kenyon.

As his business increased he found himself by degrees overburdened with cases. He had taken a villa at Ealing, and here the two friends used generally to dine and sleep two or three times in the week. Here also came Mansfield; Chambré, Vansittart, Ley, Thurlow and others, after the courts were up.

In return for his hospitality, Kenyon assisted in answering the cases which they brought down with them. The following entry appears in his Diary for 1767:—'Answered twenty cases for Dunning. Mr. D. told me he had fifty-three retainers for contested elections in House of Commons.'

Another deputy, or devil, as they were called in the profession, was Wilson, afterwards a judge.

It was in allusion to this method of proceeding that, when asked by a friend how he managed to get through so much business, Dunning replied, 'I do one

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third of it, another third does itself, and the remaining third continues undone.'

The practice was of material benefit to the deputies. By degrees the attorneys found out how it was that the cases were so speedily answered, and Kenyon began to be largely employed first hand. On this slight foundation his future celebrity was built. Ten years later he was making 3,000*l.* a year solely by opinions.

Another occurrence deserves notice, inasmuch as it had a material effect in influencing his fortunes.

A chance had introduced him to the Duke of Portland, who was then straining every nerve to secure the northern elections for Government against the influence of Sir James Lowther, 'a name,' says Wraxall, 'which was rendered odious by this memorable contest.'[1]

The Duke was glad to secure a hard-working lawyer for the elections, and Kenyon accompanied him to Carlisle and afterwards to Cockermouth, and drew the necessary documents. He had the satisfaction of securing the return of his clients for the borough: but in the county the Sheriff refused so many votes on the ground of informality, that Sir James Lowther was returned by a small majority. The result, however, was not acquiesced in by the Duke, and when Parliament met, Kenyon was employed as counsel for Mr. Fletcher, and had the satisfaction of reversing the position of the opponents. The connection thus formed was of great advantage to him, and the Duke continued to consult him on various matters as long as he remained at the bar.

[1] Wraxall's Memoirs, First Series.

The following letter will show the estimation in which he held him:—

The Duke of Portland to Lloyd Kenyon, Esq.

'Charles Street, B. Square, Sunday, July 10, 1768.

'My dear Sir,—Poorly as the inclosed may express the sense of the gentlemen concerned in the Cumberland and Carlisle elections, as well as my own, custom must apologize for such an offer, and your own kindness and zeal for the cause will, I hope, represent to you the sentiments we entertain of the services you rendered to the cause. We have only to beg the continuance of your assistance in the completion of this work, when Mr. Fletcher's petition comes on to be heard, and I therefore shall only detain you to wish you all kinds of success in your journey, and to assure you that I am, with great haste,

'Dear Sir,

'Your very faithfull, humble servant,

'PORTLAND.'

'My head has been so full of the Cumberland business whenever we have met, that I never recollected to mention to you, or rather put you in mind of, some hints you once dropped about my estate in Cheshire. If you should remember anything upon the subject, I should be much obliged to you for the repetition of it. I can be at home at any hour to-morrow morning before dinner, or can call upon you.'

The following, though they belong to a somewhat earlier period, may perhaps find a place here:—

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F. Filmer, Esq., to Lloyd Kenyon, Esq:

'Brick Court, December 19, 1761.

'Dear Sir,—With the assistance of one of your own franks, I am enabled to return you my thanks for your obliging letter of y^e^ 16th, the receipt of w^ch^ gave me a very sensible pleasure. The pleadings you enclos'd will be of service to me; I had before been endeavouring to borrow a little sense upon y^e^ subject from our friend Tom Walker, but he co^d^ not furnish me with a precedent, w^ch^ was the thing I chiefly wanted, and his learning upon it was somewhat too refined for a novice like myself, though I dare say it wo^d^ have been very intelligible to Yates or Ashurst; however, he seemed to agree with you in opinion, that in point of reason and sense the Replication ought to conclude to y^e^ country, but that the current or rather torrent of authorities was otherwise, w^ch^ I suppose will drive us to our Rejoinder.

'The day you went out of town the Parliament met in the Middle Temple hall, and after choosing Mr. Morris their speaker, resolved on a call of y^e^ House, and Mr. Wood, the Ser^it^ at Arms, was commanded to give personal notice to all the Members then in town. The session continued during the rem^r^ of Vacation Commons, and as I hear, for I never attended, the House came to several resolutions of great importance, but as y^e^ votes are not published, I know not the particulars, further than that they sat very late the last day of their session upon a motion for impeaching Mr. Lofft, the worthy president of y^e^ Barmess, of high crimes and misdemeanours pretended to

have been committed by him during the last term in violation of the rights and privileges of the Commons. The debate was long and maintained with great obstinacy on both sides; but at length, the worthy gentleman's friends so far prevail'd, that he who attended pursuant to summons was allowed to make his defence in his place, which he did much to y^e^ satisfaction and entertainment of all partys, not excepting his most violent opponents. The chief speakers in this and every other debate of consequence were Messrs. Dunning and Hotham,[1] whose eloquence has been much applauded. These gentlemen attended that service with y^e^ greater assiduity as they were excluded from the gallery of y^e^ other House of Commons by an order expressly prohibiting the admission of any but the sons of Members or Peers of Parliament . . . . I have been to see y^e^ Coronation procession at both Houses; that at Covent Garden is most magnificent indeed and infinitely beyond what I expected.

'You see the Chief Justice of y^e^ Common Pleas is dead,[2] and probably to-night's Gazette may declare his successor; 'tis generally thought[3] Mr. Att^y^ will be the man, tho' 'tis said Bathurst makes a push. If y^e^ Att^y^ takes it, Mr. Soll^r^[4] will of course succeed him, and then the contest for Soll^r^, 'tis imagined, will lye between Norton[5] and de Grey.[6]

'I am y^r^ affectionate and obliged serv^t^,

'FRAN. FILMER.'

[1] Afterwards Baron of the Exchequer.

[2] Lord Chief Justice Willes. [3] Pratt, afterwards Lord Camden.

[4] Charles Yorke. [5] Afterwards Speaker.

[6] Afterwards Lord Walsingham, Chief Justice of the Common Pleas.

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The following is another letter from the pen of Mr. Percival, who appears to have shared the perplexities of some people at the present day respecting the aims and practices of the clergy:—

(Extract.)

'The worthy Clergy of the Diocese of Canterbury are very pompous in their address, and if his Majesty will follow the advice of that learned reverend body without reserve, I doubt not but the Everlasting Crown they promise him would be such a one as Laud provided for Charles y^e^ 1st. I am sincerely for the good of the Church of England, but I freely own I think the Clergy ought not to be concerned in State affairs, for they always make blundering work of it: their politicks being more calculated for the meridian of Madrid or Lisbon, than that of London or Westminster. In the meantime, if they can flatter the present King into good measures, I will say they have once done well. But what are we to say to the address of the London Clergy. They seem to be as much too low as the Canterbury folks are too high. Now I draw from these addresses this inference — Secker[1] thinks his interest at Court is rising, and Sherlock[2] his over in that pious place. You will say I judge harshly, but remember, whensoever you want a key to a priest's conduct, that interest is his ruling motive.

'Y^r^ aff. kinsman and very humble servant,

'THOS. PERCIVAL.'

Meanwhile Dunning's fame had been rising rapidly.

[1] Archbishop of Canterbury ob. 1768.
[2] Bishop of London from 1749 to 1761.

'Mr. Dunning,' records Mr. Kenyon,[1] 'made a most celebrated speech at the Bar of the House of Lords for the East India Company, against a Bill for restraining them from increasing their dividends. He spoke above three hours.'

'Mr. Dunning told me that he had this evening had an offer made him of the post of Solicitor-General, which I advised him to accept.'[2]

'Mr. Dunning told me he had been last night[3] with the Lord Chancellor and had accepted the office of Solicitor-General.'

'Went to Little Ealing with Mr. Solicitor-General for dinner.[4] Cornwall, Mansfield, Kirby and Martin dined there. Mr. S. G. told me he got last year by his business above 6,100*l.*, and that his fees of office did not amount to the odd money above the 6,000*l.*'

Mr. Dunning, however, felt how precarious was the tenure of the office he had accepted, and was not unnaturally solicitous as to the position he might occupy in the event of a change of Government. In this matter he seeks the advice of his friend :—

John Dunning, Esq. to Lloyd Kenyon, Esq.

'Teignmouth, near Ashburton, Devonshire,
'September 27, 1768.

'My dear Friend,—As it is now necessary for me to come to a speedy resolution on the question which I have for some time past been call'd on to consider, whether I ought to continue in the path I have hitherto successfully trod in, or to seek my fortune

[1] June 23, 1767.
[2] December 15, 1767.
[3] December 17, 1767.
[4] June 12, 1768.

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elsewhere, as I am sensible this is one of those questions of which one's friends can judge much better than one's self, and as there is none in the number of those I have the honr to count such in whose friendship or in whose judgment I have a more thorough confidence, I am unwilling to decide upon this point without writing to consult you, since unfortunately I cannot do it in person. I remember very well, you have told me more than once that I ought to take this step, but I am not sure whr you had at all consider'd it, or spoke only the opinion of the moment. Pray weigh it for me with the attention it deserves, and give me the result as soon as you can, which will greatly conduce to what my mind in this instance stands much in need of, Decision. You will consider that it embarks me in an unknown sea in which, whatever opinion I may entertain of my own skill, or the partiality of my friends may incline them to entertain of it, there must be a degree of hazard; what is worse, that with the utmost success that can be hoped for, the adventure, pecuniarily consider'd, must be a losing one; but what is still worse than all (and this makes me again and again regret that I did not profit by the advice you gave me on a former occasion) is the chance, to say no more, of losing the rank which alone suggests the measure now under considern. To say truth, this is the objection that sticks most with me. The danger of an untrodden path, after the good fortune I have had in getting thro' other difficulties of the like nature, I am not so pusillanimous as to dread more than I ought: the pecuniary loss I have almost precluded myself from laying much stress on by the step

I have already taken, and I will not look back; but, having perhaps unwisely put myself in a situation which at present I presume to think it is of no great consequence to me whether I keep or quit, I foresee that the measure proposed, if pursued, will enhance the value of it amazingly, from the very ineligible station the loss of it, after having taken this step, wo^d^ place me in. Now, what there is to be put in the other scale I hardly know; the higher hon^rs^ of the prof^n^, strange as it may seem, if I know myself, I do not wish for. However, you will, I know, see all these things, as you do everything, in a clearer and juster light, and will value them all according to their true estimation. Tell me therefore what I ought to chuse, and you will lend me an opinion upon a subject on which I find myself unable to form one. I need not tell you, what the nature of the subject bespeaks, that this scrawl is intended for no eye but yours, nor need (I trust) make any professions of the regard and affect^n^ with w^ch^ I am

'Always yours,

'J. D.'

'*Lloyd Kenyon, Esq., to John Dunning, Esq.*

'My dear Friend,—I am honoured with your letter at my return from Stafford sess^ns.^ Nothing but the most extream partiality ever prompted you to ask my sentiments upon any point upon which you doubted, and that w^h^ you now call upon me to consider is of all others the most important and furthest out of my reach. I have certainly more than once talked of your removal into the Court of Chancery as a step

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fit for you to consider, and the inclination of my opinion was, that you ought to take that resolution. I think so, not because it w^d redound to your advantage in point of pecuniary profit, but because it seemed the road to the highest honours of the profession; and I am sure I do not flatter when I say that you have only to take the right road to ensure your arriving at the end of the journey. I am afraid you deceive yourself when you think you do not wish for the higher honours of the profess^n. At present, to be in the situation you are, is perhaps more eligible. But the time will come when "non progredi est regredi," and I am afraid it would be rather irksome to you to see others go forwards who can have no other chance but by your being out of the way. I would not be understood to say, for I protest I do not think, that you can in any situation be out of the way; but still the C^t of^ Chancery seems to me to be the readier road, and a short attendance there before will make the cushion easier to you when you shall sit upon it. Upon this matter, therefore, I still think the removal a right measure, but all this depends entirely on your continuing within the Bar. The newspapers talk of changes in the State, and some of your friends are named as those who will resign. If you partake of their disgust or have any other the most distant view of giving up your present rank and going again with^t the Bar, you must not think of changing your Court; for it would be truly ridiculous to see you opening trials and answers drawn by me and any but yourself. As long as the Chancellor continues in place, can there be any impropriety in your applying for a

King's Counsel's patent, or patent of precedence to improve your rank at all events? I should think they would hold themselves obliged to you for putting it in their power to do you a service. If the "Ins" and the "Outs" are in a fluctuating condi^{n}, I would not have you determine till you have considered. You'll say I leave you as undecided as I found you—perhaps so, but upon reading what I have written, I almost wonder I have presumed to opine so much as I have. Do what your own judgment suggests and you will not err. I am not made of materials fit to advise you. It is only for me most sincerely to esteem you. I am, my dear Dunning,

'Your most obliged and attached

'Ll. K.

'*7th October*, 1768.'

When in 1770 the difficulty here alluded to actually occurred, Lord Mansfield took the opportunity of paying Mr. Dunning a singular and gratifying compliment. It is thus recorded in the Diary:[1] 'Mr. Dunning appeared at Westminster Hall, in *Banco Regis*, in a stuff gown, without the Bar, having resigned the post of Solicitor-General. Lord Mansfield told him he should call to him to move next after the Serjeants and the Recorder, and that he supposed the rest of the Bar would not be displeased at it. The gentlemen without the Bar in the other Court also gave place to him next after the Recorder of London.'

About this time, Mr. Kenyon made the acquaintance of another rising lawyer, who became afterwards one

[1] May 2, 1770.

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of the most constant of his friends. The following are the earliest of a long series of letters from Pepper Arden, afterwards Lord Alvanley :—

(Extract.)

'Stockport, September 4th, 1769.

'Some friends of mine in this town have been so partial to me as to desire my opinion upon a case which, though in a branch of the law to which I am at present almost an utter stranger, is to them of no small importance. I said the Poor Laws were a subject which I had never properly attended to, and begged they would resort to other advice. But my opinion was still desired. Under these circumstances, willing to do myself no discredit in the eyes of my countrymen, I have presumed to apply to you. . . . . I am well convinced that you have business enough of your own upon your hands, which would make it highly improper for me to ask such a favour from you.'

The request was promptly granted, and Mr. Arden gratefully acknowledges his friend's assistance :—

'I beg you will accept my best thanks for the favour of your obliging letter, as also for the very friendly offer of your assistance upon future occasions. I value no man's friendship and advice more than yours.'

It is pleasing to trace the early dawning of friendships which lasted without interruption as long as Mr. Kenyon lived. These letters, too, illustrate one very agreeable feature in his character: his complete unselfishness. Throughout his life, his great abilities were

always at the service of his friends, both high and low, and the tradition still survives in the neighbourhood in which he lived, that he never refused to help one of his poorer neighbours, with the same care and attention that he would bestow on a case of the greatest importance.[1]

[1] The following extracts from Mr. Kenyon's Diary are worth preserving :—

'1769, *May* 10.—A tumult about the King's Bench Prison on Mr. Wilkes' account; some people killed by the soldiers.

'*Feb.* 3.—Sir Fletcher Norton kissed hands on being made C. J. in Eyre, which place for life, with a large pension annexed to it, were his wages from the Ministry for the part he took in Parliament against Mr. Wilkes. Mr. Wallace told me he had been with the Chancellor (Camden) last night, and had a promise of being immediately made a King's Counsel.'

CHAPTER III.

Extracts from Diary—Charles Yorke—Introduction to Thurlow and John Scott—Appointed a King's Counsel and Chief Justice of Chester.

(1770—1780.)

CHAP. III. 1770.

MR. KENYON had hitherto taken little or no notice of public affairs. Immersed in his professional pursuits, he found little time to spare for the stormy controversies which then made up political life. But his intimacy with Dunning gave him some insight into passing events, and he occasionally recorded in his Diary some of the incidents which came before his notice in his intercourse with his friend.

Some of these records are not without value; and with a brief explanation of the events to which they refer, I shall proceed to insert some of them, which belong to this period.

The year 1770 dawned amid intrigues which subsequent events rendered eminently tragical. The Government, divided against itself, and assailed from without with merited reproach, for its conduct towards Wilkes and in the management of affairs in America, had hardly a friend in Parliament. The support of the King might, nevertheless, have enabled the Ministers to weather the storm, had it not been for the extraordinary resuscitation of the Earl of Chatham. This celebrated statesman, who had been supposed dead to

the political world since his resignation in 1768, suddenly re-appeared in the House of Lords, to protest against the arbitrary measures of a Government which he himself had called into existence :—

'The constitution of the country,' he said, 'has been openly invaded, in fact; and I have heard with horror and astonishment, that invasion defended upon principle. What is this mysterious power, undefined by law, unknown to the subject, which we must not approach without leave, nor speak of without reverence; which no man may question, and to which all men must submit? I thought the slavish doctrine of passive obedience had long since been exploded; and when our kings were obliged to confess their title to the crown and the rule of their government had no other foundation than the known laws of the land, I never expected to hear a divine right, or a divine infallibility attributed to any other branch of the legislature. Power without right is the most odious and detestable object that can be offered to the human imagination—it is not only pernicious to those who are subject to it, but tends to its own destruction. It is as Littleton has truly described it—*res detestabilis et caduca*.'

This animated speech was almost theatrically effective. The Chancellor, Lord Camden, stung to the quick by some remarks on his conduct, declared himself opposed to the policy of his colleagues. To the astonishment of the House, he acknowledged that he had long tacitly disapproved of their measures. With a blind faith in Chatham, he had continued to hope against hope, that that great statesman might, restored to health, yet

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reanimate the failing counsels of the Ministry. When the Earl retired, he had adhered reluctantly to the Duke of Grafton, to whom he was personally attached. Bitterly did he repent his adhesion. But now he would compromise himself no longer: his conscience would not allow him to associate himself even in name with measures which he detested.

Far better would it have been for his reputation, had he earlier acted up to these principles. The possibility of his retirement had been foreseen many months before. As early as November Mr. Kenyon alludes, in a letter, to the reports then current:—

'The papers will inform my uncle of the event of his friend Wilkes' cause. To-morrow it will be known when the Parliament will meet. It is imagined it will not be till the 9th or 16th of January. The Soll^{r}-General seems to expect considerable changes before the meeting, and told me he suspected the Chancellor and he should resign.'

The responsibility of each individual Minister for the acts of his colleagues is a doctrine which, in the interests of political morality, cannot be too rigidly enforced; and Lord Camden cannot be justified for his tacit acquiescence in the arbitrary measures which he afterwards repudiated.

It must be owned, however, that the doctrine of Ministerial responsibility was, in those days, very leniently interpreted, and posterity will perhaps favourably compare the mistaken party spirit of Lord Camden with the unfortunate loyalty of Lord North. The Whigs in opposition were naturally delighted at the defection of an opponent of such position and character, and did their

best to prevent a successor of any calibre from filling his place. The Earl of Shelburne declared that the seals would go a-begging, but he hoped there would not be found in the kingdom a wretch so base and mean-spirited as to accept them on the conditions on which they must be offered.

The Ministry was at its last gasp. The Marquis of Granby and the Solicitor-General had divided with Lord Camden against their colleagues, and were expected to resign with him. For a few days it was vainly hoped that matters might be accommodated. But George III. was furious at the defection of the malcontents, and would have dismissed the Chancellor, if he had not followed up the intention indicated in his speech and resigned. The story is here taken up in the Diary:—

'*Janry.* 14.—Mr. Solicitor told me the Chancellor was to go out as soon as somebody could be met with to take the seals; that Lord Mansfield had refused it; that he, Mr. Solicitor, should resign in a few days, though he was solicited by (the) administration to stay in, and had great promises made him.

'*Jan.* 17*th.*—The Speaker of the House of Commons[1] sent to the House to resign his place, on account of ill-health. The Chancellor delivered up the Seal, which was given to Charles Yorke. Mr. Solicitor went to court this day as Solicitor, but told me he should resign his post to-morrow, and Thurlow was to succeed him.

'19*th.*—The Sol^{or}-Gen^{l} sent to the new Chancellor, in order to wait upon him to resign his office, but his lordship was ill.

[1] Sir John Cust.

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'20*th*.—News brought us to Mr. Sol$^{or's}$ that L^{d} Chancellor Yorke died between five and six o'clock, of the breaking of a blood-vessel, as it was said.

'21—Mr. Sol^{or} went this day to the Duke of Grafton, to desire he would represent to the King that Mr. Sol^{or} wished to resign. The Great Seal was delivered this evening to Baron Smythe, Mr. Justice Bathurst, and Mr. Justice Aston. Most wonderful!

'Ll. K. dined this day with Mr. Sol^{or} Gen^{l} Dunning, at his chambers in Lincoln's Inn, alone. Mr. Sol^{or} told me that before last Tuesday the Marquis of Rockingham and his friends had suspected that Mr. Charles Yorke had a mind to take the seals: that on Tuesday Mr. Yorke was with the King, and then refused to be Chancellor. That from the King he came to Lord Rockingham's (where many of his friends were) and told them of his refusal. They highly extolled his behaviour, and the Marchioness of Rockingham, and the ladies with her, were acquainted with Mr. Yorke's spirited behaviour: they came downstairs and kissed him as the first of patriots. The next day Mr. Yorke was to go to court (as the etiquette requires) to make his bow and thank the King for the honour intended him. On his way thither, he called upon his brother the Earl of Hardwicke, and left him with a seeming satisfaction in what he had done in refusing the seals. At the levee he saw many of the Rockingham party, who congratulated him on the conduct of the preceding day. The King, instead of taking Mr. Yorke's bow in the Circle, directed the Lord in waiting to tell Mr. Yorke to come into the closet. He went in,

and was there prevailed upon to take the Great Seal as Chancellor. From court he went to his brother Lord Hardwicke, in order, as supposed, to give him an account of what had happened, and to justify his conduct. He was immediately let into the room to his brother, where was Lord Rockingham. Neither of them knew or suspected what had happened. He seemed much confused, hesitated, and was at a loss what to say. His brother blamed him. Lord Rockingham said (politely) he durst say he had reasons for what he had done, and it was unnecessary for him then to trouble himself with giving an account of the business. He left his brother's and ordered his carriage to drive to St. James's (with a view, as supposed, to resign the Great Seal). But just at the Palace gates he ordered his servant to drive home. Soon after he got home, he was seized with a fever (owing, as supposed, to his agitation of mind). About four o'clock on Saturday morning the 20th, as he was straining to vomit, a blood-vessel broke, and from that time till after five that afternoon, when he died, he frequently vomited great quantities of blood. His lady was by when the blood-vessel broke: she fell into hystericks, and was not recovered when he died. His patent for a peerage was made out and given him during his illness: he threw it by, seeming dissatisfied. When he was looked upon by the physicians to be in extreme danger, Lord Hardwicke was sent to and consulted with whether the patent should not be sealed, who directed that it should not. So that it was not sealed when he died.'

I have inserted this narrative, written on the evening after Charles Yorke's death, *in extenso*, as it to a great

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extent corroborates the statement afterwards published by Lord Hardwicke, and refutes the story which attributes the death to suicide—a story which has been somewhat generally believed, without, I think, sufficient evidence to substantiate it. To supply the loss of Charles Yorke, the Government redoubled their efforts to regain Dunning.

On the 21st, writes Mr. Kenyon:—

'Mr. Sol^or also told me (what he said he had not, nor probably should tell to any o^r person living), that if he would have continued in his place, it was intimated to him he should immediately be made Attorney-General; and if that place was properly filled, Mr. de Grey would have the Great Seal. But for his own part he thought it handsomer to resign, when he could no longer concur in the measures of Government, than lay them under the odium of turning him out for acting in Parliament according to his opinion. That he did not know he should ever take any imployment again. This he was resolved of, that he would not do it till things were greatly changed, and till there was a well-grounded assurance that there would be some stability in Government, which he saw no prospect of.

'That the Duke of Grafton told him this day, when he waited upon him about resigning the post of Solicitor-Gen^l, that in his ride out yesterday he met Lord Camden, and sincerely congratulated his L^dship on his having retired from publick business. That his Grace observed to his Lordship, that since they who had set out in administration of publick affairs with the same sentiment had not agreed together, he saw no probability of the members of the

present Opposition agreeing, when the zeal of opposition could not prevail upon the leaders to avoid showing their differences of opinion at present. CHAP. III. 1771.

'He also told me that the Hon^ble^ Mr. Thomas Howard was meant to be proposed by the Opposition to-morrow, as a candidate for the post of Speaker of the House of Commons, against Sir Fletcher Norton; that if the Ministry could get from Sir Fletcher his grant for life of the Chief-Justiceship in Eyre, he believed they did not care what became of him: that he thought if the Opposition would propose Mr. Grenville or Mr. Dowdeswell as Speaker, they would carry their point against the Ministry.

'He said he thought it was fortunate for Mr. Yorke's character, as a lawyer, that he was dead, as he did not look upon him (as) equal to the office of Chancellor, and thought if he had held the Seal two or three years people would have changed their opinion as to his ability; that his arguments never, in his opinion, produced conviction.

'The day Mr. Yorke refused the Great Seal, L^d^ C. J. Wilmot was desired to be 1st L^d^ Commissioner, and refused it.'

These circumstances led to the resignation of the Duke of Grafton, and Lord North was appointed his successor.

To his long administration it will be necessary hereafter to refer.

Mr. Kenyon, who now occupied chambers in Essex Court, was making rapid progress. His fee-book shows that his receipts, which in 1770 amounted to 1,200*l.*, rose the following year to 2,500*l.*, and in 1772 to 3,200*l.*

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It was now understood in the profession that his practice was very considerable. In 1771, Lord Mansfield told him 'that, considering his gains, he ought no longer to receive recovery money; for that, though he did not keep a chariot, he could afford to do so.'[1] He does not appear during this period to have confined himself to one Court, or even to one branch of the profession, but he accepted whatever employment was offered him, whether in the Common Law Courts or in Chancery. It was, perhaps, partly owing to this that he accumulated that wonderfully varied store of legal knowledge, which afterwards rendered him, in the opinion of many, equally fit to preside in the King's Bench and in Chancery.

Mr. Dunning still remained in opposition. He availed himself of his leisure by taking a villa at Putney, where his weekly gatherings were resumed. Here met Wedderburn, Ashurst, Wallace, Hotham, Mansfield, Grose, Ley, Jack Lee, Impey, Mitford, Skynner, Rooke, Day, and shortly afterwards, Pepper Arden and Scott: an extraordinary roll of legal celebrities. It was here, too, that Kenyon first became acquainted with his greatest friend in after life, Edward, afterwards Lord Chancellor Thurlow. The friendship between these two remarkable men originated in reciprocal kindnesses. Thurlow was an idle man, though probably not so idle as has generally been asserted.

Kenyon, on the contrary, had an extraordinary capacity for work; which, by a sort of tacit agreement, he put at the service of his friend.

Thurlow, in return, neglected no opportunity of pro-

[1] Diary.

moting his junior's advancement. Seldom, perhaps, has a friendship so intimate subsisted unbroken through life, between men of such widely different characters: Thurlow, brilliant and witty, equally fitted to command the senate and to charm the social circle—indolent or careless in details, inaccurate often from mere perversity or nonchalance, but towering above his contemporaries by the strength and vigour of his intellect: dictatorial and imperious to a degree, and holding the laxest opinions as to religious and moral observances: Kenyon, on the other hand, strict in his principles, and consistent in his adherence to them; almost intolerant in his hatred of vice and immorality; shy and retiring; no orator, no statesman; peculiarly destitute of wit or imagination, but singularly shrewd and clear in his judgment, and rapidly accurate in his perception of the truth. Wanting the force and fire of his friend, he was gifted with the sterling qualities, the possession of which might have made Thurlow in reality what he was sometimes called, the Wolsey of his age.

The following letter—the first of a long series—answers some congratulations which Kenyon had sent on his appointment as a King's Counsel (1771):—

'*Edward Thurlow, Esq., to Lloyd Kenyon, Esq.*

'Adelphi: Thursday.

'D^r^ Kenion.—Many thanks. Neither ambition, nor avarice, nor vanity have prompted *me*, but a persuasion that the thing will answer to me in securing to me a reasonable degree of credit, and a moderate addition to my present fortune. As to my want of

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diligence, you wound me and do me an injury, if you think I have lately failed in that point. I have read and attended, since this Chanc^r had the Seals, most diligently, upon my honor, and I can ensure to myself that I shall pursue the most unremitted industry, if that will serve me.

'I wish to know if you think that, with strict attendance and exertion, I may still do well, assisted by the gown, w^ch may give me, I sh^d think, more chances of being tryed, especially in Equity, where I mean to (practise?), and to confine my little exertions?

'May I consult you at times as a director and enlightener of my labours? Pray write me a comforting letter if you think I deserve one: y^r last chilled and lowered me very much. Adieu.

'Mrs. H. is better, but still so weak that she can scarce move.'

It was about this time that Kenyon struck up an acquaintance with another celebrity, John Scott, afterwards Lord Chancellor Eldon. In later years Lord Eldon always gratefully acknowledged Mr. Kenyon's kindness to him at the outset of his professional life. He was specially recommended by him to conduct the Clitheroe Election Petition, one of the first cases in which he gave proof of his splendid abilities. More than this, as Lord Eldon afterwards told his friend the second Lord Kenyon, in the early days of his life in London he was allowed free and every-day access to Kenyon's house, and on more than one occasion to his purse also. 'If,' he added, 'I was ever to forget it, I should be the most ungrateful man alive.'

From John Dunning is the following chatty letter, which pleasantly alludes to the relations existing between them :—

From J. Dunning, Esq., to Lloyd Kenyon, Esq.

'Shaldon, near Ashburton, Devon,
'September 24, 1771.

'Dear Kenyon,—I am sorry to break in upon you, employ'd as, I hope you are, in planting, farming, or some other amusements that will return you *incolumem Novembribus horis;* but I fancy I have a sort of prescriptive right to your assistance in all my difficulties, and as I have a letter informing me that a respectable opinion has been given, totally differing from mine, on the case inclosed, I want the sanction of your authority to satisfy me I am wrong, before I give up an opinion I have yet found no reason to retract. Give me therefore one minute, for it will cost you no more, to tell me what answer I ought to have given, and in return I will pay you with a piece of advice which I rather wish than expect you to follow, *i.e.* not to employ another minute on any law subject till we meet. I have just subscribed my concurrence to an opinion of yours on a case of Mr. Crew's. I hope you did not prove me wrong at Chester, in the case of your friend the Recorder?

'Yours affect^ly,

'J. D.'

In 1774 Mr. Kenyon was unfortunate enough to lose his mother, to whom he was sincerely attached, and the following year his father, at the advanced age of

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1774.

seventy-seven, followed her to the grave. He had been a most indulgent parent, and his sons felt his loss deeply. Before he died he had the satisfaction of seeing his son Lloyd united in marriage to a lady in every respect worthy of him. This was his first-cousin, Mary, daughter and co-heiress of George Kenyon, Esq., of Peel Hall, county Lanc. Mr. Kenyon's choice proved a most fortunate one. His wife was a woman of more than ordinary ability, and of the most amiable temper and disposition. Through life she enjoyed his entire confidence, and lived with him on terms of the greatest affection. In the person of her son George, the second Lord Kenyon, who succeeded to the old Lancashire property, the two branches of the family were thus re-united.

The death of his father placed Mr. Kenyon in an independent position, and he might now, had he desired repose, have retired from his profession. But an idle life was unsuited to him; he was on the high-road to distinction, and wisely determined to persevere. He rented a house in Lincoln's Inn Fields, where he entertained his friends frequently during the term; the vacation was occupied in visiting his relations or in excursions.

In 1774 a dissolution of Parliament took place, and Mr. Kenyon was strongly urged by his friends to allow himself to be nominated for the borough of Flint, in the place of Sir J. Glynne, whose retirement was thought probable. He had great promises of support, but Sir J. Glynne was persuaded to reconsider his determination, and Mr. Kenyon, in consequence, withdrew his pretensions. He was now largely em-

ployed in the Equity Courts, and was retained to argue several cases of importance before the House of Lords.

He was probably surprised, however, when he was applied to for his opinion by no less a personage than the Lord Chancellor himself (Apsley). The question was then violently agitated both in Parliament and out of doors, whether the mother country had a legal right to tax the colonists for imperial purposes. The Chancellor, though a most excellent man, was not a very profound lawyer, and he appears to have consulted Mr. Kenyon on this point, and directed him to ascertain whether there were any precedents or authorities for such a course of action.

'The Chancellor sent for me after the rising of the court, to ask me whether there were any records of the old Earls of Chester having raised taxes or held parliaments within the county palatine, and talked with me at large as to the power of taxing by Parliament, though the places were not represented.'[1]

His great abilities were at length to receive a more official recognition. On the death of Sir R. Aston, he was asked separately by Thurlow and Wedderburn, whether he would accept the vacant judgeship. Lord Mansfield also inquired of Wallace, whether he thought it probable the offer would be accepted, but he answered, 'Certainly not,' and he was right. He was now at the head of his Circuit, and his professional gains were far in excess of the emoluments of a Puisne Judgeship; more than this, he was encouraged by Thurlow, who had now reached the Woolsack, to as-

[1] Diary, February 11, 1775.

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pire to the highest honours of the profession. The offer was repeated two years later, on the death of Sir W. Blackstone, but again unhesitatingly declined, though considerable pressure was put upon him.

'*Feby.* 14, 1780.—Sir W. Blackstone, one of the judges of the Court of Common Pleas, died: a most learned judge.

'*Feb.* 16.—Dined at Lord Chancellor's *tête-a-tête.* He talked to me about supplying the vacancy in the C. P.: said he was much pressed in favor of Serj^{t} Forster, and asked my opinion of Serj^{t} Grose and John Wilson.

'*Feb.* 17.— Mr. Justice Buller called on me about taking the judge's place, in consequence of conversation he had yesterday with the Chanc^{r}.

'*Feb.* 18.—Mr. Baron Eyre called upon me, to persuade me to accept the vacant judgeship in C. B., and told me the Chanc^{r} said he should think it an honor to himself to give it me. I declined it. Mr. Dunning told me the Chanc^{r} had this day mentioned to him that the judge's place was at my service, if I would accept of it, but Dunning told him he tho^{t} I w^{d} not.

'*Feb.* 18.—Breakfasted with the Chan^{cr}. I told him I declined being judge. He approved of my resolution, and bid me look to the Ch. Justiceship of Chester, which I sh^{d} have, if he had the disposition of it. Told me what had passed with Chief Justice de Grey respecting Serj^{t} Forster being judge, which de Grey requested.

'*Feb.* 29.—The Att^{y} Gen^{l} (Wedderburn) called on me, pressing me to take the Judge's place

in C. B., and intimated that he was to be Chief Justice.

'*March* 2.—The Lord President (Earl Bathurst) sent for me and spoke to me about being a Judge; said he was sorry I had refused it, and advised me to consider about it.

'*July* 25, 1780.—Dined with Lord Chanc^r. He told me he would get the place of C. J. of Chester for me if he could. He told me he had anonymous letters, as he supposed, from Mr. A., against my political principles.'[1]

In 1779, Mr. Kenyon was junior to Dunning in the celebrated trial of Stratton and others for deposing Lord Pigot, Governor of Madras; but he does not appear to have had any opportunity of particularly distinguishing himself. He was now the head of his Circuit. On the relative success of his brother barristers on the Circuit, he thus comments in a letter to his wife:—'The Circuit has agreed very well with me—and though I am extremely in fashion among the attorneys, and in *very nearly every cause*, yet I do not find the fatigue of this sort of business so great as what I often experience in town, by the distraction occasioned by running from Court to Court, and the anxiety consequent upon that . . . . . Burton does nothing on the Circuit. He showed me a letter from Batt, who has had great success, in good business at Winchester, and in eighteen out of twenty-one causes at Salisbury. I think he will succeed now. Morris was in great

[1] I suppose this refers to Arden, but can find no clue to the insinuation in Mr. K.'s correspondence.

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credit. *Rooke in nothing.* I think Bower gets on with us. Howarth in great credit. He and Cowper are the first candidates for my vacancy.' [1]

The eminence which he had now attained justified the Chancellor in procuring for him the coveted distinction of a Silk Gown: and he kissed hands on the 30th of June on his appointment; Jack Lee and Pepper Arden, both intimate friends, being included in the same batch of King's Counsel.

Shortly before the autumn assizes came on, Moreton, the Chief Justice of Chester, was taken seriously ill. It was thought for a time that he might recover, and Kenyon was originally intended to have acted as his deputy on the Circuit, and received the sign-manual to authorise him to do so. Before he set out, however, Moreton died, and Thurlow was not slow to confer upon his friend the appointment he most coveted.

It is said that one Serjeant Davenport, a prosy lawyer of some standing, who was very anxious for the promotion, thought to obtain the Chancellor's favour by accommodating himself to his well-known rough and ready humour. 'The Chief-Justiceship of Chester is vacant,' he said. 'Am I to have it?'

The reply was equally laconic. 'No! by God, Kenyon shall have it.' So anxious in truth had he been to gratify his friend, that, as Kenyon himself has recorded, the tears ran down his face when he told him the news of his promotion. On another occasion, when it was proposed to make Kenyon resign the office, on his appointment as Attorney-General, Lord Thurlow

[1] Dated Monmouth, August 20, 1778.

burst in: 'If you propose that to him, I'll send down an express, which shall reach him before the message from Government, and advise him to fling the offer in your faces.' So strong in his affections was this haughty and imperious man.

Mr. Kenyon's promotion was especially popular in the Principality, where he was deservedly esteemed and respected. 'My reception here,' he writes from his first Circuit, 'has been flattering: bells, bonfires, and illuminations. Mr. Fitzmaurice and some other principal gentlemen of the county told me they came merely out of respect to me. I had a long civil message from Mr. Myddleton, of Chirk Castle,' &c. By the profession, too, the appointment was generally applauded. Mr. Kenyon's capacity was universally acknowledged, and he had gained the respect of his fellow barristers by resolutely refusing to have recourse to any improper means of obtaining business. A very sincere friend, Sir Beaumont Hotham, one of the Barons of the Exchequer, thus expresses the sentiments of the profession:—

From Sir B. Hotham to Lloyd Kenyon, Esq.

'Lancaster, August 20, 1780.

'My dear Kenyon,—I was not anxious to be one of the first of your numerous friends who would send you their congratulations on your late promotion, because I trusted that you would not construe their sincerity by their date. And well knowing the strong tide with which such letters would flow in upon you, I wished rather that mine should reach you when you should be more at leisure to receive it. The hurry of that

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business and of your Circuit being now over, permit me, as an old friend, most sincerely to rejoice with you, that the profession has done you justice in placing you thus early in so honourable an office. It is not for me to address to *you* any of the gratulations that I make to the public on this occasion. But even *you* ought to know that the public feel such an interest in your promotion as is very rare. For, in my conscience, I believe there is not a man in this country, who is not highly satisfied with your advancement. I mean not to take up more of your time than to wish you your health to enjoy so desirable an office, being very sincerely interested in every passage of your life that is to lead to your happiness and honour. I beg you will be good enough to make my best comp^ts^ to Mrs. Kenyon, who I hope is as well as *she ought to* be. When you have finished answering all your cases (if that time is ever to come), I wish Lady Hotham and I could flatter ourselves with the hope of seeing you both at Chiselhurst, if you stay near London during the autumn. I shall be there in ten days or a fortnight at latest: and excepting the Old Bailey week, which commences on the 13th of September, I shall stay there till the term. You are well enough acquainted with Circuits to know that they are too much alike to admit of any news from them. We have gone on very happily, have had very fine weather, and as times go, a reasonable quantity of business. At York there was very little. At Durham I had a good deal. At Newcastle, L^d^ Loughborough had. At Carlisle I was worked, having an entry of forty causes. Here the business seems to be much as usual, tho' I don't

yet know what the entry will be. I hope your Circuit went off smoothly. CHAP. III. 1780.

'Once more, my dear friend, adieu: and give me credit for warm sentiments of regard upon this and every other occasion—being very truly

'Yours sincerely,

'B. HOTHAM.'

CHAPTER IV.

Trial of Lord George Gordon.

(1780.)

CHAP. IV. 1780.

HISTORY has too often proved how narrow is the line which divides enthusiasm from fanaticism. A well-disposed enthusiast led by the purest motives enlists in a cause, which appears to him righteous and holy. Sooner or later he is brought in contact with the baser crowd, who for the most part bear rule in these upheavings of society: and he is seldom able to resist their influence, much less to govern or restrain their lawless appetites. The reign of the Commune in Paris is the most recent and deplorable instance of this conflict of light and darkness. It is pitiable to read of the glorious aspirations of some of the enthusiasts who believed they were inaugurating a reign of peace and equality, but, who were carried on the wild wave of revolution, and swamped amid scenes of vice and carnage, from which they must have recoiled and revolted with horror.

Amongst the teeming masses which inhabit large towns, there are thousands of ruffians always ready to join in a tumult, which opens out a prospect of licence and riot, many of them as ignorant as the Ephesians of old, of the very cause which has brought them together.

The Gordon riots were no exception to this rule.

'What! summon 40,000 fanatics to meet together,' writes Romilly to Roget, 'and expect them to be orderly!'

The reign of George III. was more than ordinarily productive of tumult, partly owing to the weakness and unpopularity of the earlier administrations, and partly to the rapid increase of population in the large towns, then unprotected by an efficient police. The Gordon riots were perhaps the most alarming of any.

Some acts alleviating the condition of the Roman Catholics had passed through Parliament, apparently without observation. The country, however, was in an ill-humour: weighed down by the increased taxation necessary to support an unsuccessful and iniquitous war, the people were ripe for tumult and disorder.

The Acts had applied only to England and Wales, but the following year it was proposed to extend them to Scotland. The Scotch, devoted to their own form of religion, as a result perhaps of the fierce conflicts in which they had asserted its independence, had imbibed something of the bigotry of the foreign sectaries. The cry went abroad that their Church was in danger. 'Then burst forth,' says an eloquent writer, 'a storm of fanatical indignation and alarm, such as had not been equalled since the days of Knox.'[1] Associations and committees for the Protestant interest were rapidly formed: riots and outrages marked the progress of the conflagration. Priests were insulted in the public streets, and so violent was the excitement in the large towns, that the Roman Catholics themselves

[1] Memoirs of the Court and Cabinets of George III., by Jesse, vol. i. p. 263.

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implored Lord North to postpone the intended concessions. Meanwhile the flame had crossed the border, and the Protestant associations in England arrayed themselves under the banner of Lord George Gordon.

This young nobleman was the son of Cosmo, Duke of Gordon, and Member of Parliament for the borough of Ludgershall. He is described as a moody enthusiast, and was probably more than three parts insane. During the sessions of 1778–1780, we find him making wild and violent speeches against the monarchy, and supporting his arguments, if they can be so called, by buffoonery of the lowest order. On one occasion he insisted on reading to the House the whole of an inflammatory pamphlet, notwithstanding the remonstrances of his friends.[1] On another, he is reported to have declared 'that he had 160,000 men in Scotland, and that if the King did not keep his coronation oath they would cut off his head.' His was precisely the character which might stimulate the passions of a mob, but must fail to control them when excited. His principal duty as President of the Protestant Association was to promote the presentation of petitions. A monster petition was accordingly set on foot, and a meeting of the Association was held at the Coachmakers' Hall, to obtain additional signatures. Here the President foamed against the enormities of the Roman Catholic Church, and to assist his oration, read at length the Papal catechism to his audience. 'For his part,' he declared, 'he would run all hazards with the people, and if the people were too lukewarm

[1] Parliamentary History, vol. xx. pp. 1312, 1314; Adolphus' History, vol. iii. p. 133 *et seq.*

to run all hazards with him, when their conscience and their country called them forth, they might get another President; he was not a lukewarm man, and if they meant to spend their time in mock debate and idle opposition, they might get another leader.'[1] A day was then appointed for the presentation of the petition, and the President declared that if he was not supported on that day by 20,000 Protestants with blue cockades in their hats, he would not deliver it.[2] The mob, convinced by this inexorable logic, assembled 60,000 strong, on the 2nd of June, and took possession, under the guidance of Lord George, of the entrances to Westminster Hall. For a time they contented themselves with flinging scurrilous epithets at the Members of the Legislature as they passed. After a while the carriages were stopped, and their occupants compelled to shout, 'No popery!'

Having thus established themselves in the precincts of St. Stephen's, where, curiously enough, the Duke of Richmond was then moving an address for a reform of Parliament, they rapidly became violent and riotous. Later generations have witnessed similar scenes; but never probably have the persons of our hereditary legislators been subjected to such indignities. Their appearance indeed must have bordered closely on the ridiculous. By twos and threes they made their way into the House of Lords, showing unmistakeable signs of the treatment they had undergone. 'The Duke of Northumberland had his pocket picked of his watch. The Bishop of Lichfield had his gown torn. The wheels of the Bishop of Lincoln's

[1] Adolphus, vol. iii. p. 136. [2] *Ibid.*

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carriage were taken off, and his lordship escaped with life, being obliged to seek shelter in the house of Mr. Atkinson, an attorney, where he changed his clothes and made his escape over the leads of the adjacent houses. Lords Townshend and Hillsborough came together, and were sent into the House without their bags, and with their hair hanging loose on their shoulders. Lord Boston was so long in the power of the mob, that it was proposed by some of the Peers to go as a body and endeavour by their presence to extricate him, but whilst they were deliberating his lordship escaped without any material hurt.'[1]

Meanwhile the weak-minded instigator of the tumult hurried backwards and forwards from the House to his followers, whom he several times harangued from the top of the Gallery stairs. General Conway and others expostulated warmly with him, but to no purpose. When urged by the Chaplain of the House of Commons to disperse the mob, he called out, 'Here is the clergyman of the House of Commons: I desire you will ask him what his opinion of the Popish Bill is.' Another time he went to the door and said, 'The Speaker of the House of Commons has just said that you are all come here under a pretence of religion;' 'Lord North calls you a mob,' and so forth.[2] How all this would have ended, it is difficult to say; but after some hours, a party of foot and horse guards arrived, and the majority of the petitioners were prevailed upon to disperse.

Lord George himself was discovered shortly after-

[1] Annual Register, vol. xxiii. p. 258.

[2] Howell's State Trials, vol. xxi. p. 523 *et passim*.

wards half-asleep in a chair in one of the refreshment-rooms of the House of Commons.

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For a time the madness of the mob seemed to have spent itself; but few of the rioters returned to their homes, and at night a series of outrages commenced, which continued almost without intermission till the 8th of June.

Mrs. Kenyon, who was then residing with her husband in Lincoln's Inn Fields, gives the following account of the disturbance:—

'We neither suffered fright nor danger by this mob, tho' they were very noisy at night, and there still is a continual crowd about the Sardinian Ambassador's. I do believe there were very many thousands of people assembled yesterday in S^{t} George's Fields, who afterwards went to Westminster Hall, but did no sort of harm there, further than crowding the Hall and making it hot, and sometimes shouting at the people they did not like as they passed. Lord G. Gordon was seen by Mr. Leycester haranguing the crowd, with his hat off, for a considerable time, and misleading an unruly and ignorant set of people in S^{t} George's Fields: he afterwards came to them in the H. of Commons, and said he could get no answer as to the repeal of the Rom. Cath. Act, and advised them to attend every day in a body till their petition was granted. They then vowed they w^{d} destroy all the Roman Catholic Chapels, and as it was a very hot day, took care to get drunk in good time, and as soon as it was dark began to attack our neighbourhood, tho' till we went to bed at eleven they seemed not to do any mischief. They woke us about twelve with noise and shouting: we got

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up to look, and saw a great crowd, but knew nothing of fire till the morning. As you know, the chapel is in Duke St. We sent —— to look at it: he says they have broken all the images, and everything within the chapel that they could find, and pulled all to pieces and burnt before the door, broke the windows and burnt the frames and doors of the chapel; but by the help of two engines all the houses, &c. were preserved, and not a window in the Sardinian Ambassador's house broke. Mr. K. is provoked beyond measure with Lord George Gordon, says he is mad, and should be confined, and wishes some spirited conduct may be pursued to suppress the first lawless outrage: eight of these poor fellows are taken up, who little knew what they have been about.

'Four o'clock.—Mr. Kenyon is just come in, and says the Attorney-General (Wedderburn) was very active last night in endeavouring to save the chapel, and was in great danger from the mob: they were so perverse they would not help to work the engines to prevent the fire spreading; that if Mr. Graham Mitford and some other gentlemen had not assisted, most likely great mischief might have been done. The guards, who were sent for, were heard to say of the mob, "Great fools!" "Why didn't they pull down the building? Fire might hurt their neighbours." Fine times!'

The Government, meanwhile, had exhibited the most culpable weakness. For a time the arm of the executive appears to have been completely paralyzed by the magnitude of the outbreak.

It is said that the Ministers hesitated to use force,

from a doubt which prevailed as to the amount of provocation which would justify a magistrate in ordering the military to fire on a mob, and whether it was necessary that the Riot Act should have been previously read. The mob was not slow to avail itself of this suspension of the laws. London for several days was in a state of siege.

The lawyers were not hampered by the doubts which perplexed the Ministers of the Crown. Taking the law into their own hands, they formed themselves into companies for the protection of their property.

'Mr. Abbot, afterwards Lord Colchester,[1] was enrolled in the Temple to bear a musket in the company commanded by Howarth, and drew lots with his brother and the rest of his party, to fire through a window that looked up Mitre Court, leading to Fleet Street, which was one of the avenues by which the mob was expected to come. Mansfield, K. C., commanded the whole force of the Temple; Erskine commanded a company at the gate next Essex Street; and Heath, then a Serjeant-at-law, and since a Judge, commanded the gate leading to Blackfriars; the mob only assaulted the outer gates of the Temple, and the Northumberland Militia constituted the real protection within.'

'Notwithstanding the accounts in the papers,' writes Mrs. Kenyon on the 6th, 'I hope we shall be just as safe in this place as anywhere. . . . . We were waked last night about 12 or near one, by a great light which proceeded from a fire in Great Wild Street, just behind Clare Market; the mob set a tallow-chandler's in a flame, who had assisted to take away

[1] Lord Colchester's Memoirs, vol. i., Introductory Memoir, p. xiv.

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the rioters on Thursday night, and pulled another house to pieces in Little Queen Street, which belonged to a currier, who had offended in the same way, but there they did not burn anything. From thence they went to Sir George Saville's, but he soon got guards, so that they only broke windows and doors and were beat off. To-day I fear they will attend at the House, but Mr. K. has promised me to come home before they sit. Some of the Members talk of complying with the repeal of the Roman Catholic Act; others say it will be an encouragement to riot; if it is not soon suppressed, many innocent people must suffer, for the love of mischief exceeds all bounds. They say these people were most of them Methodists, but there are bad enough of all religions to make a sad bustle here, and I dare say do not care a straw what is done, if they can plunder and destroy, and level all to destruction.

'The account of the Bishop of London in the papers was very true, and my Lord Mansfield forced to escape on Friday by water in a green coat and bob-wig. . . . . Mr. Burke, they say, was in great danger this morning—he took up two rioters himself, and went to ask the mob what they would have. "If you want me," he said, "here I am, but never expect I shall vote for a repeal of the Act I supported." They all cry'd out, "He's a gentleman, make way for him." Lord George Gordon, it is said, has decamped.'

The gravity of the situation may be gathered from the correspondence of the time: 'Allow a man insignificant enough to be an unmolested spectator'—thus writes Mr. Eden to Lord North—'and who is

sufficiently composed amidst such a scene, to suggest what occurs to him. Unless the tone of civil government is restored by some very serious exertion, we shall, in forty-eight hours, be in a state of anarchy, and shall see a general plunder, attended, perhaps, with a massacre of all the most respectable men. In short, the situation is alarming, and without extreme activity and wise decision, the nation is undone.'[1]

'If the King,' says Bishop Newton, 'of his own notion had not ordered forth the soldiery, the cities of London and Westminster might have been in ashes.'

As soon, however, as the military were given power to act, the danger was over; though the loss of life was proportionately greater than it would have been had coercive measures been resorted to at the first outbreak.

'Our danger is at an end,' writes Gibbon a day or two later, 'but our disgrace will be lasting, and the month of June, 1780, will ever be marked by a dark and diabolical fanaticism which I had supposed to be extinct.'[2]

The loss of life in these terrible riots was never accurately ascertained. 'Powder and shot,' says the writer in the Annual Register, 'was not so fatal to the rioters as their own inordinate appetites; numbers died with inebriation, especially at the distilleries of the unfortunate Mr. Langdale, from whose vessels the liquor ran down the middle of the street, was taken up by pailfuls, and held to the mouths of the deluded multitude, many of whom killed themselves with drink-

[1] Mr. Eden to Lord North, June 7, 1780, Auckland Papers.
[2] Gibbon's Miscellaneous Works, June 8, vol. i. p. 546.

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ing non-rectified spirits, and were burnt or buried in the ruins.'[1]

Meanwhile, the principal offender had been arrested and examined before the Privy Council, by whose order he was escorted to the Tower under the guard of a considerable military force. Here he had time to ponder over the results of his fanaticism, and to speculate on the future which awaited him.

He was, indeed, in a great strait, and his relatives were alarmed as to the result. Public opinion was inflamed to an exaggerated degree against one who had, undoubtedly, been the instigator of the fanaticism which had led to such melancholy results. Every effort would be required to obtain an acquittal. Amongst their difficulties was the selection of counsel to conduct the defence. With such an array of talent to choose from, this may require some explanation.

The most brilliant advocate of the day was, undoubtedly, Mr. Erskine; but Erskine had hardly been at the bar two years, and was still a junior. It was doubtful, also, whether his knowledge of law was very recondite. On the other hand, it was very desirable that his undisputed power of persuading a jury should not be hampered by a jealous or overbearing senior. Fortunately he was on terms of the greatest intimacy with Mr. Kenyon, who could supply exactly the qualities in which he was deficient. As a lawyer *pur et simple*, Mr. Kenyon was then without a rival at the bar, but he had not been much employed in the Criminal Courts, and his style of speaking was not the

[1] Annual Register, vol. xxiii. p. 262.

best calculated to impress a jury, sometimes apt to decide more by their feelings than by the black letter of the case.

To the two friends it was decided to commit Lord George's defence, and on the 25th of November Mr. Kenyon had a long consultation with the Duke of Gordon and the prisoner in the Tower.

On the 24th of January he was brought up to the bar of the Court of King's Bench, and after complaining of the hardships he had been subjected to in the Tower, and asking for a fair and impartial trial, he pleaded 'Not guilty,' and was remanded to the 5th of February following.

On that day, before a numerous and excited audience, he was put on his trial at Westminster. Lord Mansfield presided, and the other Judges of the Court of King's Bench, Willes, Ashurst, and Buller, were also present. For the Crown, the Attorney-General (Wallace) and the Solicitor-General (Mansfield) appeared, as well as Messrs. Bearcroft, Lee, Howarth, Dunning and Norton: a formidable array of talent.

After Mr. Norton had opened the case, the Attorney-General followed with a fair and temperate speech:—'The particular species of treason,' he said, 'with which the prisoner was charged under the statute Edward III., was levying war against the King in his own realm, and this was of two sorts: the one directly and immediately against the person of the King; the other constructive levying of war against the majesty of the King;' which he proceeded to explain as a 'great and numerous insurrection of the people to effect by force an alteration of the established

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law of the country; or the reformation of grievances real or imaginary, in which the insurgents have no particular or special interest.'

After reviewing the course of events which had led to the establishment of the Protestant Associations, and justifying the Act of Parliament which had caused the agitation, he alluded to the meeting in St. George's Fields, which he characterized as 'a very large army,' and denied that petitioners had any right to dictate to Parliament, or take from Parliament their deliberation and judgment upon any subject; that, he said, 'would tend directly to the dissolution of the Constitution and the subversion of Government.'

He then dwelt on the unhappy results of the agitation, and observing that all persons who contributed to the perpetration of the outrages were *as* criminal as the very persons who committed the acts, he proceeded to show how far Lord George was implicated.

'Gentlemen,' he added, 'you have now before you, as will appear upon the evidence, the author of all those violent and disgraceful proceedings, to whom the whole is to be imputed. An offender of such a description has not often appeared in a court of justice. —It is not an accidental assistance or encouragement, but he is the contriver of the whole. If you are satisfied of this, you will pronounce him guilty, and your verdict will teach the present and future ages this lesson, that no man, however exalted in birth, situation, or connexion, can violate the peace, the order, the government, and the laws of his country, with impunity.'

The evidence for the prosecution followed, and the

skill of the prisoner's counsel was severely taxed in the endeavour to explain away some of its most condemning features. This part of the defence was entrusted mainly to Mr. Kenyon, and he succeeded in sorely puzzling more than one of the witnesses. 'Mr. Kenyon,' said Erskine afterwards in his speech, 'who now saw the witness bewildered in a maze of falsehood, and suspecting his notes to have been a villanous fabrication to give the show of correctness to his evidence, attacked him with a shrewdness for which he was wholly unprepared. "Give me one instance," said Mr. Kenyon, "in the whole course of your life, where you ever took notes before." Poor Mr. Hay was thunderstruck; the sweat ran down his face, and his countenance bespoke despair—not recollection. "Sir, I must have an instance: tell me when and where." Gentlemen, it was now too late: *some* instance he was obliged to give; and as it was evident to everybody that he had one still to choose, I think he might have chosen a better. He had taken notes at the General Assembly of the Church of Scotland, six-and-twenty years before. . . .'

'So ambitious, indeed, was this miscreant of being useful in this odious character, that after staying a little while in St. George's Fields, he ran home to his own house in St. Dunstan's churchyard, and got upon the leads, where he swore he saw *the very same man* carrying the *very same flag* he had seen in the Fields. "How," says Mr. Kenyon, "do you know that it was the same person you saw in the Fields?—Were you acquainted with him?" "No!" "How then?" "Why, he looked like a brewer's servant." "*Like a brewer's servant.* What! were they not all in their Sunday clothes? Was

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the man with the flag then alone in the dress of his trade?" "No." "Then how do you know he was a brewer's servant?" Poor Mr. Hay! Nothing but sweat and confusion again. At last, after a hesitation which everybody thought would have ended in his rushing out of Court, he said he knew him to be a brewer's servant, because *there was something particular in the cut of his coat; the cut of his breeches; and the cut of his stockings.* "I am sure, gentlemen," observed Mr. Erskine, "you will not forget whenever you see a man, about whose apparel there is anything particular, to set him down for a brewer's servant."'[1]

The length of the trial had almost exhausted the attention of the court and the jury, when Mr. Kenyon began the prisoner's defence. As has been before observed, he was no orator, his utterance was thick and hurried; and except when excited, when his earnestness made him forcible, his style of speaking was little calculated to enlist the sympathies of a jury. These deficiencies were to a great extent compensated by the facility with which he grasped the salient points which required attention, and by his evident mastery of the legal difficulties. After confessing his inexperience in the Criminal Courts, he proceeded thus:

'When persons are accused of actions of great enormity, one is apt to look round about one to see what the motives were that could induce the parties so to act. The prisoner at the bar stands before you a member of one of the most considerable families in this country. At the time when this conduct is imputed to him, he was a member of the legislature, he stood in a situation

[1] Howell's State Trials, vol. xxi.

which he was not likely to better by throwing the country into convulsions . . . The crime imputed to the noble prisoner is, that he, being a liege subject of the King, had levied war against the King. The crime is imputed to him under an Act of Parliament enacted for the wisest purpose, that crimes of this very enormous nature should not depend upon loose construction; but that men, in their journeys through life, might, by looking upon the statute, see what the plan of their duty was, might see what the rocks were upon which they were not to run; and might see, in the plain words of the statute, what they were to do, and what to avoid. The Attorney-General has told you, very properly, that the crime which he meant to impute to him was not a crime against the person of the King, but that it was a constructive treason. Gentlemen, I have only to lament that there is such a phrase in the law as "constructive treason." At the time when the law was enacted, I verily believe the legislature had it not in their contemplation, that the words "constructive treason" would find their way into the Courts at Westminster; but however, so it seems the law is; for so it seems, upon some certain occasions, judges have decided. The offence (when it comes to be more particularly described) which is imputed to the prisoner is, that he had levied war by collecting together a numerous assembly to effect by violence an alteration of a law, and procure a redress of grievances; and in order that Mr. Attorney-General might get your inclinations to run before the evidence he gave, and that he might be in possession of that which ought never to be roused upon these occasions, namely, the passions of those who are to try the cause;

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he, in terms of great aggravation, compared with the evidence that has been given, stated to you, that the whole city might have been burnt; that there was great reason to believe this had been concerted by our foreign enemies; that they mixed in this business; and that, therefore, the Bank was to be attacked, the public credit sapped, and everything thrown into confusion, and we to be delivered up, bound neck and heels, an easy prey to our enemies abroad. I dare say, he did not mean to do what was improper; but, surely, it was most improper. In businesses of this kind it is not the duty of an advocate, in stating his case to a jury, to enhance the crime beyond the degree of guilt it will fairly bear, when the evidence is produced before you: and if anything has been said beyond the fair import of the evidence, it has not been well said, by the counsel who conducts the prosecution for the Crown. . . . .

'Here I must refer to the probability of the case; if juries are to believe witnesses, merely because they will swear to facts, juries are become of little use indeed. Those who are acquainted with the profession see it, and lament when they see it, that there is no fact whatever, that witnesses may not be brought up to prove. It is for juries, therefore, to discriminate, to judge between the probable and the improbable, to judge by comparison of the testimony he gives, with the probability of the case, and to form their judgment whether that which he says is true. Juries become of no use if they are to believe it because a witness swears it; they have to lay aside their judgment, and only make use of the faculty of hearing and speaking, and the whole is done. But that is not their province; they are to

exercise their judgments; they are to winnow the evidence, and get rid of that which is the chaff; and are only to abide by that which informs their sober judgment, and enables them to say, that here deciding upon the life of a fellow-citizen we cannot mistake; we see this man has probability added to his testimony; we see that he is supported by other witnesses. Upon this part of the evidence, I conceive, this can never be said to be the case. . . . .

'I cannot forbear relying much upon that which has not been proved by the other side. Does it appear, after the many prosecutions that were commenced, that one single individual connected with Lord George, or belonging to that Association which he was president of, has ever been found obnoxious to the laws of the country? Has criminal guilt been fastened on any of them? Has one of them been indicted? Has one of them been put in hazard? Has a crime been imputed to them, legally, in a court of justice? Gentlemen, it has not; active and anxious as the officers of the Crown have been—and it became them well, as far as they could, to investigate enormities of the kind, that have been so feelingly, and I wish I could not say, in rather an aggravated manner, stated to you; it was their duty to drag the offender from the corner in which he lay concealed, to bare his head in the face of justice, and punish him if he is guilty; yet all that anxiety, conducted by great abilities, has not been able to impute a crime to any one man of the denomination of those Lord George Gordon was the head of. If that is so, permit me to submit to you the case upon which I stand. I admit that there were enormities committed of so

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gross, so flagrant a kind, as to be a reproach to the country; that punishment ought and did tread upon the heels of the offenders; that it is impossible for eloquence much superior to mine, for imaginations much more lively than mine, to paint these enormities in too high colours. But it may be supposed, that when a multitude of people, not a mob of people, were got together, for good, at least not for illegal purposes, at least not for traitorous purposes (for that is enough for me)—not for traitorous purposes,—if you can suppose that other people, of much worse principles, and having much worse designs to achieve, availing themselves of the meeting of the Association, did get together from all corners of the town, and formed that banditti represented to be at the Sardinian Ambassador's chapel, and perpetrated the conflagrations that happened—How is this to be imputed to Lord George Gordon? The Attorney-General tells you, if a man turns out a wild beast, he is guilty of murder if a man is killed by it. I deny it; it is not the law of the land, nor the law of humanity. If a man turns a wild beast into a room, where death must necessarily ensue, no doubt he is as guilty as if a man shot into a crowd: but where a beast is turned out, and the probable consequences will not be that death will ensue, then is the crime to be imputed to him? It never has been: there is not a decision, not a *dictum* upon the point. I have looked into the place from which the Attorney-General supposes he got his doctrine. But suppose it was so, for God's sake how does that bear upon this point? Was Lord George Gordon's Association this wild beast? If he had a tame beast in his hand, and another taking

occasion from the tame beast being brought there, lets out a wild beast, will the Attorney-General say that he that leads the tame beast in his hand is to be answerable because another person opens a place and lets out a tyger or hyæna? In the name of common humanity and common sense, I call upon the counsel for the prosecution not to press the point. I know they will not; if they should, the law would fail them, and humanity would fail them also. I know they will not state it, because it is not the law of the land.

'Lord George Gordon was the President of a Protestant Association; an Act had passed which gave offence—right or wrong I will not say; perhaps my opinion may be, it gave causeless ground of offence; but God forbid that because I differ with men in opinions, that therefore I am to treat them as traitors to the laws of their country. It is the happiness of our nation that our laws are not like the laws of the Medes and Persians; they are subject to revision, and to be discussed and decided upon soberly; and it is not only the province of Englishmen, but their duty, if they think there are laws which press upon legal liberty, or if there are laws which improperly tolerate men whose principles are hostile to the Constitution, to petition for a review of such laws. I do not say that that is the case of the law which gave rise to the Association; but if they think so, they have a right to ask Parliament that the matter should be reviewed; that it should be soberly discussed, and after discussion should be decided upon; and, if the wisdom of Parliament think it ought to be repealed, they have a right to ask for the repeal. With these principles, which I never

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will disavow, which no man will state to you to be unconstitutional principles, this Association met; and after some time—for they had an existence long before Lord George Gordon was called in; but, thinking well of him from his character, I presume, being a man of blameless life and conversation, a man not mixing in the vices of this age; a man irreproachable in his moral and religious walk too—they thought that having such a man at their head would give weight to their deliberations; and that such a man, if he carried their request to the foot of the throne, would be attended to as a man of moral conversation and religious life ought to be attended to. . . . . .

'Gentlemen, I have opened to you as much as seems necessary to open, of the case of Lord George Gordon. I have made those observations which occurred to me, on the case laid before you for the Crown. Gentlemen, from your own knowledge in the discharge of your duty, you know that in this case the facts are to be made out, the guilt to be ascertained beyond all doubt. It is not at hazard that men are to be convicted of such offences; you are to separate one transaction from the other, and to see how far each separately goes. You are not to bundle them together, and see whether that bundle of nothing makes out something. Juries must see that there is ground upon which they go, carrying conviction to their minds that the imputed guilt is proved.

'If that is not made out to your satisfaction, however your passions may be warmed by what you saw in those calamitous days, you will, I am sure, divest your minds of these circumstances; you come to this trial

with minds totally clear and impartial; you bring into court no knowledge nor suspicions upon the subject, which are to influence your judgment; you come here to attend to the evidence given, attending at the same time to the oaths you have taken; you are to decide upon the evidence; you are to say whether Lord George Gordon is guilty or not guilty.

'I know that I speak to men of character and station in the world, and of good sense; and who know that their duty is to do justice; and know at the same time that every favourable construction is to be made in behalf of the prisoner. That has always been the language of courts, and will be the language of this court this day.'[1]

This speech was, as Lord Campbell fairly observes, a 'very honest, but a very inefficient speech.' He might have added with truth, that it was inefficient partly because it was so very honest and matter-of-fact. It was left for Erskine, in the masterly argument which, perhaps more than any other of his extraordinary speeches, has established his claim of pre-eminence amongst our forensic orators, to supply the deficiencies of his leader.

The Solicitor-General vainly attempted to modify the effect of his wonderful effort; the issue of the trial was decided when Erskine sat down. Lord Mansfield shortly summed up, and at a quarter to five in the morning, after the trial had lasted twenty-one hours, the jury returned into court with a verdict of Not Guilty.

This 'glorious acquittal,' if the breakdown of justice

[1] Howell's State Trials, vol. xxi.

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can ever be rendered glorious by the display of extraordinary talent, could not fail to shed some lustre on both the counsel for the defence; and though it was to Erskine's wonderful oration that the acquittal was mainly due, a fact which his leader always unhesitatingly acknowledged, we find that Mr. Kenyon's position in the legal profession was considerably improved by the share he had taken in the defence.

CHAPTER V.

Mr. Kenyon enters the House of Commons—State of Parties—Made Attorney-General—The Coalition—Death and Character of Lord Ashburton.

(1780—1783.)

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In September, 1780, Parliament was suddenly dissolved, and by the influence of Lord Thurlow, the new Chief Justice of Chester found a seat in the House of Commons, for the now disfranchised borough of Hindon.

Lord North was still at the head of affairs. Disastrous as had been the ten years during which he had held the reins of Government, it would be unfair to attribute the misfortunes of the country wholly, or even mainly, to his policy. It is true that at the commencement of the American war, he had expressed his determination never to yield till he saw the 'rebels' at his feet. But at this time the indignation of the nobility against the Americans was shared by almost every man of mark in Parliament, and by a large majority of the nation.

Lord North himself was strictly accurate when he said: 'I found the American war, when I became Minister, I did not create it. On the contrary, it was the war of the country, of Parliament, and approved by the people.'

It was not till after the unfortunate fracas between

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the troops and the people of Boston, that any sympathy was felt for the colonists. As late as 1775, the feelings of the majority were probably accurately represented by such statements as the following: 'For my own part,' writes Gibbon to Holroyd, 'I am more and more convinced that we have both the right and the power on our side, and that though the effort may be accompanied with some melancholy circumstances, we are now arrived at the decisive moment of preserving, or of losing for ever, both our trade and empire.' [1]

This view, as is well known, had the sanction of the King to uphold it. Through victory and defeat he clung to his favourite Minister, who, contrary to his own convictions, allowed himself to be made the instrument of George III. in his mistaken, though conscientious policy. By degrees, however, the magnitude of the struggle and the reverses of the British arms alienated many supporters of the war.

It would be interesting to speculate how far in the early days of the war the colonists would have accepted any terms short of complete independence. Once or twice in the course of the decade which witnessed this fratricidal contest, there are gleams of a disposition on the part of the colonists to return to their allegiance. The truce, however, would in all probability have been a hollow one. The standard of nationality once raised, with some show of success, the most trivial grievance would have been the signal for a fresh resort to arms; and the result, though delayed, could never be doubtful. The evil was rather that the two countries parted in anger, than that they parted. The lapse of a century

[1] Misc. Works, vol. i. p. 488.

has hardly healed the wounds of Saratoga and Massachusetts, and America herself now pays the penalty of the amputation, in the possession of a constitution which, with many advantages, lacks some elements of stability she might well have borrowed from the mother country, had it not been for her bitter hatred of England and her institutions.

The spirit in which the war had been carried on, and the tardiness with which any concessions had been made, had long rendered any accommodation impossible; and in 1780, the country was willing to accept peace almost at any price. The stubbornness of the King postponed for a short time longer the termination of the unholy contest.

Meanwhile the Minister, at variance with his colleagues, and the promoter of measures which in his heart he detested, was almost overwhelmed with the responsibility of his position.

The newspaper writers and pamphleteers joined in the endeavour to drive him from office. The following appeared in print after one of the scenes which were then almost of nightly occurrence in the House of Commons:

ON LORD NORTH AND MR. POWIS SHEDDING TEARS IN THE HOUSE OF COMMONS.

What can these weeping patriots mean,
What's all this fuss about,
Powis laments he can't get in,
North that he can't get out -
'Hinc illæ lacrymæ.'

Flebat Alexander quod totum subruit orbem,
Indignans armis nil superesse suis:
Tu quoque in Angliaco nuper, Frederice, Senatu
Flebas at loculis nil superesse tuis.—*Democritus.*[1]

[1] Copied from a newspaper into Mr. K.'s diary.

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The Chancellor was equally dissatisfied. As early as the November of the preceding year, Mr. Kenyon records, 'The Lord Chancellor expressed his great uneasiness at being in his present situation in the Cabinet.' [1]

And again in 1780, 'The Chancellor expressed himself strongly against the conduct of the Ministry.' [2]

At one time it had appeared likely that the Premier's wishes might be gratified. Indeed, in the autumn of 1779, it was the received opinion that the defection of 'what was called the Bedford party would have become general. But the Lord Chancellor and Mr. Rigby continued in their places.' [3]

Dunning's celebrated resolution, 'that the influence of the Crown has increased, is increasing, and must be diminished,' had been carried against Ministers, and other inimical resolutions were threatened. A slight illness of the Speaker suspended the sittings for ten days, and when Parliament re-assembled, a strong reaction had set in, which was intensified by the disgraceful riots of June. Ministers availed themselves of the feeling thus produced, to dissolve the Parliament, and the elections enabled them to retain their power for eighteen months longer.

Mr. Kenyon took his seat on the 31st of October, and gave his first vote in support of Sir Fletcher Norton for the Speakership, in opposition to Mr. Cornwall, the Government candidate. Though he owed his seat in great measure to the favour of the Chancellor, he did not consider himself bound to give the Govern-

[1] Diary, Nov. 24, 1779. [2] Ibid. August 4, 1780.
[3] Annual Register, vol. xxiii. p. 37.

ment his support. In fact, he uniformly opposed their measures, until the final division which drove Lord North from office, when he absented himself in deference to the opinion of the Lord Chancellor, who, he records, 'raised doubts in his mind.'[1]

During this period he is only once mentioned as taking any part in debate.

A petition had been presented by Lord Beauchamp from Lord Sheffield and Mr. Yeo, complaining of an undue election of Members of Parliament for the city of Coventry.

Under Mr. Grenville's Act for regulating the trial of election petitions, which had recently become law, the earliest day on which a committee could be balloted for to take the petition into consideration was the 26th of June.

Lord Beauchamp desired to expedite the hearing of the petition, and moved that a committee should be appointed forthwith. This was strongly opposed by Dunning and others, as contrary to the spirit, if not to the letter of the Act.

Mr. Lloyd Kenyon said 'he stood in the predicament of a Member petitioned against on the heavy charge of bribery; that his moral character was bleeding afresh every hour that the trial of the petition was delayed; that in obedience to the regulation of the House, he had submitted, on the principle of general convenience, to the day on which the committee to try the petition against him was fixed to be balloted for; that he had as much right to acceleration and preference as another, and if another was so favoured, he

[1] Diary, Feb. 27, 1782.

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should consider it as an indication that hostilities were determined against him and as a grievous injury.'

The Ministers supported Lord Beauchamp, but Mr. Fox made a vigorous speech against interfering with the principle of Mr. Grenville's Act. Alluding to Mr. Kenyon's speech, he said, 'The petition against a learned gentleman who had, with great feeling, and with great propriety, complained of the injustice of resolving to ballot for a committee to try the Coventry petition, before the House went to a ballot to try the petition presented against him, stated a charge of bribery. Bribery in order to gain a seat was a very flagrant crime. The petition presented against an honourable friend of his, the Member for Stafford (Sheridan), was founded on a charge of the same sort. The crime in both cases was very flagrant, and in both cases the sitting Members would, doubtless, be exceedingly pleased to have the petition against them heard and determined upon as soon as possible. . . .' 'It was too evident to be contradicted that the present attempt to accelerate the hearing of Lord Sheffield and Mr. Yeo's petition was made by a noble lord, high in office, because the petitioners were favourites of the Minister and agreed with him in political opinions.' The Government, however, refused to give way, and carried their point by twenty-four votes.[1]

Mr. Kenyon had few of the qualifications necessary to make a great speaker. He wanted the graces which attract the attention and command the sympathy of an audience. Always well informed and accurate, he was often dry and technical in his argument. His

[1] Parl. Hist. vol. xxi. p. 952 *et seq.*

delivery was awkward, and he sometimes found considerable difficulty in making himself clear and intelligible. His temper, too, never one of the best, was often unequal to the strain put upon it by personal accusations and attacks, then even more frequent than at present. Notwithstanding these defects, his reputation as a lawyer, and his evident earnestness and sincerity, always procured for him a patient hearing, and on matters more peculiarly within his province his authority was acknowledged by all. Sir Nathaniel Wraxall, who was his colleague, in this Parliament, for the borough of Hindon, thus sketches his public character in the House :—

'Kenyon possessed a deep and recondite knowledge of the law, the result of severe application, and was supposed to be consulted by the Chancellor on all cases that arose of legal difficulty.

'Little conversant with the manners of polite life, he retained, even when Lord Chief Justice of the King's Bench, to which high station he afterwards rose, all the original coarse homeliness of his early habits. Irascible in his temper, destitute of all refinement, parsimonious even in a degree approaching to avarice, he nevertheless more than balanced these defects of deportment and character by strict morality, probity, and integrity. As a Member of the House of Commons, whenever he spoke, though he wanted grace, he could not be reproached with any deficiency in the essential qualities of perspicuity, energy, and command of language.'[1]

[1] Wraxall's Memoirs, 1st series, p. 165.

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Though the natural bent of his mind was certainly Conservative rather than Liberal, he entered Parliament as a moderate Whig. Influenced by his friendship with Dunning, and, probably, by the knowledge that, at heart, the Chancellor was equally opposed to the policy of his colleagues, he allied himself to that section of the Whigs which looked up to Lord Shelburne and Dunning as their leaders.

It must be confessed, however, that the legal and political world were equally surprised when, on the fall of Lord North and his colleagues, he was at once appointed the Attorney-General to Lord Rockingham's Administration. He doubtless owed the promotion to the friendship of Thurlow, who, in deference to the wishes of the King, was allowed to retain the Seals.

The offer was made him by Lord Shelburne, and reached him while on Circuit, at Wrexham.

Always diffident of his own powers, he hesitated before accepting; but whatever doubts he entertained were dispelled on his return to London, by the advice of Dunning and Thurlow.

He accordingly kissed hands, on the 17th of April, with Jack Lee as his Solicitor-General.

When, in later times, a proposal was made to erect a statue to Jack Lee, it so happened that a descendant of Kenyon's was staying with the late Lord Fitzwilliam, who was a zealous promoter of the movement.

The visitor expressed his wish to subscribe, adding, that his ancestor had been a Member of the same Government as Jack Lee.

'Why, he wasn't a Whig!' remonstrated Lord Fitzwilliam.

And it was not without difficulty that he was convinced that Kenyon had ever been in office with two such decided Whigs as Fox and Lee.[1]

The new Attorney-General took his seat on the 23rd of April. The position must have been strange to him at first, as he had not had the advantage of serving the subordinate office of Solicitor-General.

He commenced, however, at once taking part in the debates, and outside the House he is acknowledged to have given the Government better and more decisive advice than any law officer of the Crown, for many years.[2]

His first essay, in his new capacity, was in a discussion which took place with respect to a Bill which was brought forward by the Lord Advocate, to restrain Sir Thomas Rumbold and Mr. Perring from quitting the country.

'Sir Thomas Rumbold was accused of having, while Governor of Madras, not only amassed an immense fortune by unbecoming means, but of first provoking a war with Hyder Ally by acts of imprudent aggression, and then of abandoning the country entrusted to his care with pusillanimous or interested precipitation.'[3]

The House had passed a series of stringent resolutions with respect to his conduct, and it was now proposed, in addition, to restrain him from leaving the country.

Sir Thomas Rumbold applied to be heard by counsel, against the Bill, and Mr. Arden and Mr. Hardinge

[1] From private sources.
[2] Lord Campbell's Lives of the Chief Justices, vol. iii. p. 18.
[3] Wraxall's Memoirs, 1st series.

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were heard for him, and John Scott, now rising into notice, for Mr. Perring.

After the counsel had withdrawn—

The Attorney-General rose to support the side of the question for which Mr. Scott had argued. 'He could not be brought to think, that it was not a very great hardship on a man to have his whole estate impounded, merely for this purpose, that he might not fly from justice. The Hon. Baronet, who was one of the objects of the Bill, was possessed of a considerable real estate; he had no objection that this estate should be the security to the public that the owner would not run away; but he could not consent that his whole property should be involved in this Bill, because the necessity of securing bail to the value of 150,000*l.* would amount, in reality, to absolute imprisonment, as he could not have it in his power to indemnify others to become sureties for him.' [1]

The debate was a curious one in this respect,—that it showed how little union existed, even thus early, between the two sections of the Administration.

In a letter to Fitzpatrick, Mr. Fox says—

'Upon the Bill for securing Sir Thomas Rumbold's property, we were only thirty-six to thirty-three. The Attorney and Solicitor-General were both against me, and I had the mortification to depend for support on the Lord Advocate, Jenkinson, and Mansfield.' [2]

The Ministry on taking office had promised, amongst other things, a strict inquiry into the alleged abuses in Government offices. The loose way in which the

[1] Parl. Hist. vol. xxii. p. 1402.
[2] Correspondence of C. J. Fox, vol. i.

balances had remained for years in the hands of the receivers, unaccounted for, had given rise to a suspicion out of doors that something worse than mere carelessness was at the root of the evil.

The Attorney-General, as the law officer of the Crown, took up this subject strongly, and independently of his office, he was well qualified from his acknowledged integrity to perform the duty.

On a motion brought forward by the Chancellor of the Exchequer to remedy the evil, he thus expressed himself:

'He did not mean to oppose the resolution, but at the same time he would not have it understood that he precluded himself in the smallest degree from a full right and liberty to have discussed, in a court of justice, the question whether the public might not call upon the great servants of the public to account for the great emoluments they have made by means of the public money. He did not mean to give any opinion on the subject himself, but he was determined to be at liberty to have it discussed before a proper tribunal, if such a discussion should appear to him necessary. He spoke not from any ill-will to any man alive, but solely from a sense of duty in an office which he had been unexpectedly, as he was undeservedly called to fill; he did not know how long he might remain in it: but if he should be dismissed from it, he should return to much domestic happiness, which he had enjoyed before he had been called into public life: but while he remained in it, he was determined to do his duty. He understood that there were great complaints against the auditors of the imprest: he was in habits of

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acquaintance with them, but he wished they might be informed by their friends in the House, that if they did not attend strictly and closely to their duty, he was resolved to try in a court of law the validity of those tenures under which they enjoyed immense emoluments without any labour; he said any labour, for he was given to understand that they took years to audit accounts, which might be passed in a few weeks, or even in a few days.'

There could be no doubt that the abuses which Mr. Kenyon so uncompromisingly attacked were as real as they were disgraceful, but his remarks were not palatable to a House of Commons which comprised Members who had participated either directly or indirectly in the illegal profits. He soon found that the Ministry itself was not prepared to support the sweeping measures he proposed.

Mr. Fox 'did not join with his learned friend in the propriety of the declarations he had thrown out. In the first place, he contended, as he had often done before, that when a balance of public money lay in the hands of a public accountant, all the public had a right to expect from him was that whenever the money should be called for it should be forthcoming, and that what he did with it was nothing to the public provided he had it always ready to answer the calls of the public. He requested his learned friend would draw some line, and leave room for some prescription beyond which his inquiry was not to extend: for otherwise it would always be in the power of the King's Attorney-General to keep in constant alarm and the worst state of slavery, all those who had ever filled any

public offices, or their descendants and executors, for a century.'

Notwithstanding the opposition of Mr. Fox, the Attorney-General returned to the charge, and the following week proposed a series of resolutions to compel Messrs. Rigby and Welbore Ellis, who had been respectively Paymaster-General of the Forces and Treasurer of the Navy, in the late Administration, to file statements of the balances in their hands when they went out of office: and declaring that they should be held accountable for the interest on the same from that date.

In introducing his resolutions, the Attorney-General said, 'Since he last spoke on the subject of balances in the hands of public accountants, he had consulted some gentlemen of his own profession, and he was happy to find that the general opinion of Westminster Hall was with him in the idea that the public had a right to the uses and profits of its own money. Confirmed in his opinion by that of the most respectable lawyers, he was resolved in his official capacity to see that the public had ample justice, and if he should be defeated in that House, he had still the courts of law open to him, in which he should be at liberty to bring this question to a legal decision. He protested that in his present pursuit he was actuated solely by a love of justice and a sense of duty. As for party views, he had none—he had consulted no man whatever on the propriety of the motions he was going to make, and he did not so much as know that any Member in the House would second them: however, he was not the less determined to make them.' If the motion of the Attorney-General savoured a little of the invidious character of all retrospective legislation,

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there can be no doubt that the matter was one which required examination.

Lord Cornwallis thus alludes to the subject in a letter to Col. Ross:— [1]

'In answer to your question about Rigby, I hear that the late immaculate Treasury advanced 220,000*l.* in the course of last summer to prevent his being called upon for his balance, and the short day with which Lord John (Cavendish) threatened him, as I believe you recollect, has not yet arrived: in short, he thought they were the strongest side, and could either prosecute or protect: Kenyon, however, is now at him in the Exchequer.' [2]

The editor of the Correspondence of Lord Cornwallis adds the following remarks in a note:—

'The question of these balances, said to have been 1,100,000*l.*, was brought before Parliament in 1782, by Kenyon the Attorney-General, without the knowledge and against the real wish of the Government. The attack was renewed in 1784, after large sums had been paid on account by Rigby's executors. The accounts were finally audited, January 16, 1794, with a balance indebted of 151,783*l.* 3*s.*, subject to a deduction of 46,000*l.*, as claimed by the executors. This was not settled till August, 1802, when there appeared to be a large balance due. The Treasury agreed to accept 25,000*l.*, and to wipe off 40,000*l.*: still 6,000*l.* seems to have remained unsettled.'

Mr. Fox, however, who by the same logic 'might have been made liable for interest on all the balances

[1] Dated Feb. 7, 1784.

[2] Cornwallis Papers, vol. i. pp. 158, 159, and note.

of public money which had ever been in his father's hands,'[1] resolutely opposed Mr. Kenyon's motions :—

'He acknowledged that he had not been consulted by his learned friend. His learned friend, it seemed, had consulted several able lawyers, and they had agreed with him, that the public had the right to claim the issues and profits of their own money in the hands of a public accountant. This might be law, but it did not appear to him to be common sense, and therefore he was the more inclined to think it was not law, for the law of England and common sense could not be at variance.'

Wallace, the ex-Attorney-General, supported Fox, as did the Chancellor of the Exchequer and Mr. Pitt.

Mr. Martin, an independent Member, spoke in most eulogistic terms of the conduct of Mr. Kenyon :—

'He offered his hearty thanks to the learned gentleman : he had not the honour of being known to him, and, therefore, what he said could not proceed from any personal motives, but from the satisfaction he felt in expressing his admiration for that noble character, an upright and constitutional lawyer. He congratulated the country in general, and the House more particularly, that they had such a Member among them.'

The resolutions, however, did not meet with general acceptance, and though the strongest was withdrawn, the others were rejected, by a majority of eleven.

The Attorney-General also took part in a debate which arose on an Act which had passed the House of Lords,—'to prevent the grant of any office, to be exercised in any colony or plantation, now or hereafter, belonging to the Crown of Great Britain, for any longer

[1] Lord Campbell's Lives of Lord Chief Justices, vol. iii. p. 19.

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time than during such time as the grantee thereof, or person appointed thereto, shall discharge the duty thereof, and behave well therein.'

The Bill excited some opposition, from an unfounded idea that it was pointed against America, and from a fear that the United States, still smarting from the recollection of the conflict, might resentfully delay the negotiations which were still pending.

Sir G. Saville 'moved the omission of the word America. He was of opinion that the Bill was, and would be deemed, an act of legislation.'

'The Attorney-General was surprised that such a Bill should meet with any opposition, for it was not liable to any one of those consequences which the hon. Member seemed so much to apprehend. The wisdom, integrity, honest views, and disinterestedness of the noble lord[1] who had brought in the Bill to the other House stood so firmly established in the minds of the public, that he hoped no one would venture *to reject*[2] the motives which had induced him to propose this Bill.[3] In fact, the Bill was of itself a panegyric upon that noble lord, for it was a restraint, not upon America, but upon himself, if it was true, as reported, that he was now to be First Minister.

'But gentlemen would have the word America left out of the Bill, because it might be an obstacle in the way of independence; did gentlemen recollect that we still had provinces in America which still adhered to us, and acknowledged our dominion? Would not this justify the insertion of the word in question? The

[1] Lord Shelburne. [2] *Sic.*

[3] Lord Rockingham had died the previous day.

omission would, in his opinion, be improper; the insertion would not militate against the acknowledgment of independence, if that was determined on, for the moment the independence of America was acknowledged, that moment the Bill would have as much effect and dominion over Kamschatka as over the Colonies.'

The death of Lord Rockingham dissolved the hollow truce which his influence had, with difficulty, kept in force.

The Administration, in truth, had never had any real coherence.

'Rockinghams and Shelburnes,' says Mr. Nicholls, 'were like Hessians and Hanoverians in the same camp.' 'Dunning,' continues the same author, 'was very anxious for a complete union, and said it was anxiously desired by Lord Shelburne. Burke treated it with contempt, saying the Shelburne party did not consist of more than six or eight Members.' Dunning's reply was worthy of his reputation. 'Non numeremur sed ponderemur.'[1]

The result, it is needless to say, was the resignation of Fox and Lord J. Cavendish, and in place of the latter, Pitt was appointed Chancellor of the Exchequer.

Mr. Kenyon cast in his lot with the new Premier, to whom he was personally attached, and Parliament was shortly afterwards prorogued till the following year.

It soon became clear, however, that Lord Shelburne's Ministry could not exist without some accession from the ranks of their adversaries. 'It seems to me

[1] Nicholls's Recollections. Lond. 1820, pp. 45–47.

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impossible,' writes Mr. Eden to Lord Loughborough, 'for Lord Shelburne's Government to last beyond a summer campaign, unless he gets a very considerable and avowed accession from the friends of the old Government, and even then he will be under great difficulties.'[1] 'I am very clear,' replies Lord Loughborough, 'that Lord Shelburne's Government will not do, and I don't know what will.'[2]

An unsuccessful attempt to gain Lord North did not improve their position, and when Parliament met, it was evident that, if the two parties in opposition could agree, they had the game in their hands. The difficulties in the way were many, but, as is well known, they proved not insuperable, and Fox, the accuser, coalesced with Lord North, the supporter of the American war, to turn out Lord Shelburne when proposing the Articles of Peace.

It is needless to comment on an episode which has rendered the name 'Coalition' odious ever since.

The following record of the interregnum which followed the vote on the peace, is not without interest:—

'*Feb.* 21*st.*—A second question carried by the Opposition, 207 to 190; Mr. Pitt made the greatest speech I ever heard.

'*Feb.* 23*rd.*—At Lord Shelburne's, in the evening, when he signified to us his intention to resign tomorrow; Lord S. showed me the King's letter to him.

'*Feb.* 26*th.*—Endeavoured to persuade Mr. William Pitt to accept the place of First Lord of the Treasury. Lord Ashburton, Lord Advocate, and Mr. Rigby did the

[1] July 10, 1782, Auckland Papers. [2] Ibid. July 12.

same; he seemed averse, thinking he should not be supported in the House of Commons.

'*Feb.* 27*th.*—Lord Chancellor informed me this morning that Mr. William Pitt had consented to continue in Administration.'

Mr. Pitt, however, reconsidered his determination. Dazzling as was the prize, he had the courage and discernment to refuse it.

The King's distress at his position was not unnatural.

'*March* 6*th*'—continues the diary—'Called on the Chancellor, who said he was going to the most miserable man in the kingdom, viz. the King.

'*March* 7*th.*—The Chancellor showed me a letter from the King, expressing his resolution not to give way to Fox and his desperate faction. He told me the King was in great distress; that he believed Lord North was very unhappy on account of his conduct in joining Fox.

'*March* 8*th.*—Lord Mansfield with the King till past twelve at night.

'*March* 9*th.*—Lord Ashburton sent for by the King. The Chancellor afterwards with the King.

'*March* 17*th.*—Lord Chancellor told me that Lord North and Fox had insisted he should go out; that the King withstood this: that he had written two letters to the King desiring him to give way, but had burnt both letters: that if the King sent for him he should advise him to give way.

'*March* 24*th.*—Called on Lord Chancellor at breakfast, who was going to the King. He showed me a letter from the King, complaining of the conduct of

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the Coalition, to whose chicanery he said he had opposed nothing but the conduct of an honest man, straight dealing, and expressed his hope that Pitt would take the Treasury.'

The country had thus remained for more than five weeks without a Government, and this at a time when, as Mr. Grenville said, a Government was most wanted. The Mutiny Bill had not been passed, nor the Treaty of Peace signed. 'The King's resolution not to give way,' writes the same shrewd observer, 'has most seriously alarmed me. I wish I may prove a false prophet, but I solemnly protest to God that I am afraid of the most fatal consequences. In a week's time, there will not be in the Treasury a farthing of money to defray the ordinary expenses of Government.'[1] 'The Militia,' says another writer, 'were threatening revolt, and the Navy were clamouring for their wages.'[2]

As is usual when party feeling runs high, each blamed the other as the cause of the dead lock. The judgment of posterity has divided the blame pretty equally between them.

The King was guilty of unduly stretching his prerogative in thus resisting the dominant majority of the House of Commons. On the other hand, it must be owned he had just cause to distrust the conduct of Mr. Fox and his friends. Nor can it be wondered that he should have viewed with dismay and concern, the union of a man whom he had especially delighted to honour with one whom he considered as little better than a political charlatan. Nor can it be said that the

[1] Buckingham Papers, vol. i. p. 215.
[2] Lord Stanhope's Life of Pitt.

triumph of the Coalition was in any sense a triumph of principle. It was not even hinted that Fox could have obtained better terms of peace than those which he was so ready to condemn. The Treaty was assailed because it afforded the first opportunity to the reconciled statesmen of securing possession of the Treasury Bench.

The victory, however, was with the strong, and the King at length gave way. 'I have continued,' he writes to the Duke of Buckingham, 'every possible means of forming an Administration: an experience of now above twenty-two years convinces me that it is impossible to erect a stable one within the narrow bounds of any faction, for none deserve the appellation of party; and that in an age when disobedience to law and authority is as prevalent as a thirst after changes in the best of all constitutions, it requires temper and sagacity to stem these evils, which can alone be expected from a collection of the best and most calm heads and hearts the kingdom possesses.

'Judge therefore of the uneasiness of my mind at having been thwarted in every attempt to keep the administration of public affairs out of the hands of the most unprincipled Coalition the annals of this or any other nation can equal. I have withstood it till not a single man is willing to come to my assistance, and till the House of Commons has taken every step, but insisting on the faction being by name elected Ministers.'[1]

The Attorney-General retained his office till the 15th of April, when he was succeeded by his predecessor,

[1] Buckingham Papers, vol. i. p. 219.

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Wallace. The Master of the Rolls, Sir Thomas Sewell, was, during the interregnum, in such a state of health that his death was daily anticipated, and it was intimated to Mr. Kenyon, that if he died before the Shelburne Ministry went out of power, the office was at his disposal.

'*March* 18*th*.—The Lord Chancellor asked me today, as he had done several days before, as to my wish for the Rolls: that if I wished for it he would ask it for me: as to anybody else, he was indifferent and would not *snatch* it. He seemed to wish I should hold it with Chester. He said he could not send anybody to Chester, after me, that would please the country. I asked for Macdonald, out of regard for Earl Gower.

'*March* 19*th*.—Dined with the Chancellor *tête-a-tête*. The Chancellor seemed to approve of my declining the Rolls. Mr. Orde told me Lord Shelburne was almost anxious for the Master of the Rolls' death, that I might have the Rolls if I pleased before the new Ministry should be appointed.'[1]

Sir Thomas, however, was more tenacious of life than was anticipated, and continued to hold his office till after the expulsion of the Coalition.

It is said that the Earl of Suffolk was very anxious to induce Sir Thomas Sewell to resign while his friends were in power, and called at the Rolls for that purpose. Sir Thomas attended him round the house and garden, showed him the trees he had planted, and concluded by saying, 'All this I owe to the grace and favour of the King, and no consideration shall induce me to give it up as long as I live.'[2]

[1] Diary. [2] From 2nd Lord Kenyon's Papers.

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On the 6th of June, Mr. Kenyon had the satisfaction of introducing his friend, John Scott, into the House of Commons, to which he had been returned as Member for Weobley.

Shortly after he had taken his seat, Lord Thurlow is said to have remarked to him, 'I suppose you will have no objection to pay 2,000*l.* or 3,000*l.* for your seat?' 'Not if you tell me I should do so,' replied Scott. 'Now do you know,' rejoined Lord Thurlow, 'there are three men, of noble connections, to whom I have made like applications, and they all refuse, though they gave me written assurances on the subject?' 'Can you be surprised at that?' said Scott. 'The very last person who could enforce such an understanding must be the Lord Chancellor.'[1]

In the August following died John Dunning, Lord Ashburton, Kenyon's earliest and most valued friend. 'He was,' he records, 'a man of the greatest ability I have known, of most unblemished integrity and honour, my firm friend for more than twenty years.'

He had been in failing health for some months, and had taken little part in politics since the death of Lord Rockingham.

In September, 1782, he writes to his friend,—'If it were possible that you should have half-an-hour's leisure at any time, it would not be ill bestowed upon a man who knows no more of what passes in the world than the newspapers inform him, not being well enough to be in the way of the news of the country.

'A hurrying journey, which I took to and from

[1] From 2nd Lord Kenyon's Papers.

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town just before your return, has brought me back all the complaints of the last year, and the weather we have prevents my shaking them off.

'Yours affect^ly

'ASHBURTON.'

I have already dwelt upon the character and attainments of Lord Ashburton, but it may not be inappropriate to insert here the judgment of one of the ablest of his contemporaries.

The following sketch was drawn by the Earl of Shelburne, apparently for private circulation, and I am not aware that it has been previously printed.

A companion picture, by Sir William Jones, will be found in the collected works of that eminent lawyer:—[1]

Character of Lord Ashburton, by the Earl of Shelburne.

'He had the peculiar characteristick of a great man —intuition. Like Shakespear and Milton, nature hid nothing from him. He had the greatest power of reasoning which can be conceived, and such a habit of it, that he could not slight a cause no more than an able artist could suffer a piece of work to go imperfect from his hands. He could not pass a link in the chain, and had such a faculty of arrangement that he would take an absolute chaos of matter, and return it to you in the instant so clear and distinct, as of itself to present a proper judgment without need of discussion. His speeches at the bar were sometimes long, (in Parliament he was always short,) and tried the attention of

[1] Vol. viii. p. 538.

his hearers, in an age indisposed to close investigation of any sort, much more to look for mathematical demonstration, without which his accurate mind could not be content, in any cause which admitted of it. It was no want of neatness, nor of wit, two qualities which he possessed in such a superior degree, that upon many occasions they appeared to be his fort. One proof of the former among a multitude which remain, is the famous resolution of the House of Commons relative to the power of the Crown, which he dictated after a long professional attendance, in a few words, comprehending everything, pleasing everybody, and commanding the union of all within and without doors. His wit, in which, Sir William Jones says, no mortal ever surpassed him, was not more surprising than his perfect command of it. He never suffered it to interfere with his argument, nor ever sought to shine, or to captivate, when he could convince. His professional knowledge was universally acknowledg'd. All parties allow'd him to be at the head of the bar. His industry, his liberality, his acuteness, added to his capacity, procured him the personal confidence, reverence, and attachment of almost all the great families, who always found him no less a gentleman than he was a lawyer. The only doubt was, whether he excelled most at Equity or Common Law. There was none as to anybody's coming up to him in either. The fact is well known, of the present Chief Justice of the Common Pleas beginning a law argument in the absence of Mr. Dunning, but upon hearing him *hemm* in the course of it, his tone so visibly changed, that there was not a doubt in any part of the House of the reason of it.

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'He had the most undaunted courage of body and mind, of which innumerable proofs must remain among the profession, from the daily instances he gave of it in fighting up his own way against the frowns and arts of Lord Mansfield, the cause of many a poor client against that judge's partiality and caprice, and the law of England itself against the various novelties which Lord Mansfield's vanity and unconstitutional principles made him perseveringly attempt, which Mr. Dunning as perseveringly resisted. His presence of mind never fail'd him. His mind furnished him with resources for all occasions. His sagacity to distinguish, and his spirit to seize an occasion showed itself in the advantage he took, in conjunction with Mr. Barré, to move Lord Chatham's public funeral and the provision for his family. He certainly had from nature great ambition, but his pride and his principle set him so far above it, that it may be safely affirmed, that no man living or dead knew the object of it. His peerage was forced upon him, because he felt it a momentary deviation from his profession to accept the Dutchy of Lancaster till the King's Bench became vacant, not being satisfied with the precedent of Lord Aylmer, and not at all regarding the late advancement of others of the profession to that dignity, and what influenced him still more, because he thought he could be of more use to his friends in the House of Commons. He refused for a course of years the first situations, from motives of principle and friendship. This last, however great his other qualities, was in truth the predominant feature of his character. In the various occurrences of life, it required the whole force of his reason to keep this

within the bounds of wisdom. The progress of his fortune, as well as the habits of his profession, connected him with many, not one of whom he ever forsook. There was no sacrifice which he was not ready to make to any of his connections; no fatigue which he would not undergo—no risque which he would not run. The greatest person in the kingdom said he never knew friendship till he knew him. The most obscure connection he had cannot say he slighted him, or suffered a slight to pass upon him absent or present.

'His character would not be human without some shades. He was used to say of himself, that he loved and hated in the extreme. He certainly had very little mercy on those who excited his contempt by any tendency to meanness, mischief, or malignity; while he scarce could be induced to allow a fault in those he loved. He carried this so far, that he always retained a strong prejudice on the side of such causes as he once maintained.

'His excessive habit of business made even relaxation after a short time burthensome to him, and its intervals tiresome, which, joined to the sensibility of his character, made his temper sometimes difficult. He said of himself that he was an Epicurean, not a Stoick, and that he did not devote more time to the society of his friends than Sir Matthew Hale did to writing in another profession, which belong'd to a different class of men to inculcate. He perhaps spared himself as little in his pleasures as in his business, and might by this means contribute to break up a constitution which naturally was a very strong one. If these shades existed in his character, there were only these, and, in fact, they do

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not deserve the name, for they were the overflowings of his talents and the result of his virtues. His eminence, his hospitality, his power of protection, necessarily attracted adulation, in which line none went such lengths, even to nauseate his most intimate friends, as one gentleman[1] of his profession, who owed him the greatest obligations, but, such malignity is there to be found in human nature, has been supposed the author of the single reflection which has attempted to be cast on his memory. This regarded the amount of his fortune, and went so far as to insinuate that he acquired part of it by playing in the public funds, than which nothing could have been more inconsistent with his character, or with the whole tenor of his life, which made it impossible. This scandalous report is, however, happily refutable beyond the possibility of malice, by the inspection of Mr. Child's books, which are open to anybody, where the progress of his fortune clearly appears, as well as the whole disposition of it from time to time, and only leaves a lesson behind it to great men in future—*To beware of sycophants.* To do his rivals justice, they have join'd in doing honour to his memory—and, one false voice excepted—his character is likely to transmit itself by unanimous consent to posterity as the first lawyer of his age, the warmest friend, a most dutiful son, which he proved by continual respectful attentions to his father, who died only a few years before him; an affectionate brother, which appears by a long correspondence, which I suppose is preserved, as well as by his will; a tender husband, and a most illustrious citizen.'

[1] Mr. John Lee.

CHAPTER VI.

Trial of the Dean of St. Asaph—Expulsion of the Coalition—Mr. Kenyon reappointed Attorney-General—Death of Sir Thomas Sewell—Mr. Kenyon succeeds him as Master of the Rolls.

(1783—1784.)

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MR. KENYON had presided on the North Wales Circuit regularly since his appointment, with credit to himself and to the general satisfaction of the public. As I shall have an opportunity hereafter of making some remarks on his success on the judicial bench, it will be unnecessary here to follow him through a mass of causes, for the most part dry and uninteresting.

There is one trial, however, which, partly from certain episodes which occurred during its progress, and partly from the wonderful ability displayed by Mr. Erskine as one of the advocates engaged in it, has taken its place among the *causes célèbres* of that date. I allude to the trial of the Dean of St. Asaph.

The Principality, at the commencement of the year 1783, was in a state of considerable ferment. The Very Reverend William Shipley, then Dean of St. Asaph, and son of the bishop of the diocese, like many other high clerical personages of the day, busied himself much with local and general politics, and being somewhat overbearing and very tenacious of his opinions, suc-

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ceeded in making a host of enemies amongst the staunch Tories of North Wales. Under his auspices a very pretty quarrel was fomented.

Sir W. Jones, the great scholar and lawyer, who had married a sister of the Dean's, had recently published a pamphlet entitled, 'A Dialogue between a Scholar and a Farmer.' Its object was simply to explain the fundamental principles of society and government, and to point out some of the defects of the existing constitution of the Parliament.

Its intention is thus explained by the author himself:—

Sir William Jones to Lloyd Kenyon, Esq.

'Lamb Buildings, March 28th, 1783.

'My dear Sir,—I have made several unsuccessful attempts to find you disengaged for a moment, as I was desirous of seeing you before you set out for Chester, and I for India; and of thanking you in person for your unremitted kindness to me. I should also, in the course of our conversation, have apprized you of a matter, in which I am to a certain degree implicated, and of which, I imagine, you will hear a great deal in Wales. Though I always knew that political rage and animosity would carry men to most unwarrantable lengths, and though I have long known the strange temper, not to say absurdity, of Mr. Fitz Maurice, whom I have commonly seen at variance either with his brother, Lord Shelburne, or with himself, yet I could hardly have conceived that any rage or absurdity would have hurried him into such measures as he has lately been taking. The Dean of St. Asaph and he

have had bickerings from time to time, at the meetings of the county of Flint, and the Dean has generally obtained the victory, both in weight of argument and number of suffrages; this was enough to raise the resentment of his adversary, who seems to have formed a resolution of taking the first advantage that presented itself. Mr. *Fitz Maurice* was unfortunate in seizing a ground which he cannot possibly maintain; but I, too, was unfortunate in having, very undesignedly, given him an opportunity to seize any ground at all. When I was at Paris last June, I insisted, in conversation, that the *principles of government* in the abstract were so plain and intelligible, that a clown of common understanding might comprehend them, and even be led by a few easy questions to unfold them himself. To prove this, I wrote *currente calamo* a short *Dialogue*, containing no doctrine which I do not think the essence of our English Constitution. It was allowed that I had succeeded; and, even in a country governed avowedly by despotism, the tract was circulated and approved. I sent a copy of it to London, when it was immediately printed by the *Society for Giving Constitutional Information*,[1] and I enclose one of the copies, which they distributed with their other tracts. I thought little more of it, until I learned that, having found its way into Wales, it had been so much relished by the Committee for the

[1] 'The only object of this society,' says Sir Samuel Romilly, 'which consisted of a few men of great talents, but of which the greater number were well-meaning but foolish persons, was to publish and circulate gratuitously political tracts, which might inform the people upon the true principles of the Constitution. These tracts, as Burke has somewhere observed, were never as charitably read as they were charitably published.'

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county of Flint, that they have resolved to have it translated and dispersed in the *Welsh* language. This could not escape the vigilance of *Fitz Maurice*, who attacked the Committee for approving a paper "seditious, treasonable, and diabolical." Against this violent attack I send you a cool and concise defence, which I was desired to draw, but which has rather irritated than softened the opponents of the Committee, whose very "manes" are not permitted to rest in peace. If it were possible for this matter to come before you *judicially* or *professionally*, I would not have mentioned it; but, as you will certainly hear much of it at table, I was desirous of preventing any impression that might be made on your mind by misrepresentation of the fact. As to the doctrines touched in the Dialogue, I can only say that if Mr. FitzMaurice and myself had not lost our elections at Oxford, I would have met him boldly in the House of Commons, without the least doubt of proving that they are the very keystone of our public laws and liberties; for *Blackstone*, who was a guarded man, and whose Commentaries were inspected in manuscript by most of the judges then on the Bench, has written ten times more strongly on the general *doctrine* of *resistance*, and the right of *using arms for that purpose*, which includes the right of *knowing how to use them*. In a word, if the right of resistance be not law, we have no Constitution; and if we may not be *prepared* with arms, there never could be any effectual resistance, and the doctrine would be a mockery; if we give up these rights, we give up everything. I take the liberty to enclose a tract relating to this subject, with the addition of a few

references to *Blackstone*, in comparison of whose language my humble Dialogue is the most harmless *lusus ingenii* that ever was thrown upon paper. If I should be so unfortunate as not to see you before I embark, I hope you will permit me to write to you from India, and to continue through life that friendship which I shall ever esteem so honourable, and so precious to,

'My dear Sir,

'Y^r^ much obliged and faithful servant,

'W. JONES.'

'*Advertisement.*

'A short defence hath been thought necessary, against a violent and groundless attack upon the Flintshire Committee, for having testified their approbation of the following Dialogue, which hath been publicly branded with the most injurious epithets; and it is conceived, that the sure way to vindicate this little tract from so unjust a character, will be as publickly to produce it.

'The friends of the Revolution will instantly see that it contains no principle which has not the support of the highest authority, as well as the clearest reason.

'If the doctrines which it slightly touches in a manner suited to the nature of the Dialogue, be "seditious, treasonable, and diabolical," Lord *Somers* was an Incendiary; *Locke*, a Traitor; and the *Convention-parliament* a Pandæmonium; but, if those names are the glory and boast of England, and if that Convention secured our liberty and happiness, then the doctrines in question are not only *just* and *rational*, but *constitutional* and *salutary*, and the reproachful epithets belong

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wholly to the system of those who so grossly misapplied them.'

Mr. Fitz Maurice and his partisans gave a different version of the story, which I will insert without comment. It is taken from the case, which was afterwards submitted to counsel, and was drawn by another William Jones, then a celebrated solicitor residing at Ruthin :—

'The Defendant having by some means got himself placed at the head of a *self-appointed* Committee of the county of Flint, consisting chiefly of the clergy of his father's diocese, and a few gentlemen whom he had inveigled to enlist under his banner, seemed to vie with his reverend brother (Mr. Wyvil), which should make himself the most conspicuous for propagating sedition, and making the people dissatisfied with the State and Government of this country. The supposed object of this, as well as of other Committees of Association, was to overthrow a bad Administration. That end being accomplished, the reverend chairman of the Flintshire Committee, having a further object in view, thought proper to move, and prevailed upon the Committee to order by their resolutions of the 20th of Nov., 1782, that the pamphlet in question, under its then title of a "Dialogue between a Scholar and a Peasant," should be translated into Welsh, and distributed *gratis* through the Principality at the expense of the Committee.

'On the same day another resolution was entered into that the Sheriff should be requested to call a meeting of the county at large for the purpose of giving its sanction to or disapproval of the proceed-

ings of the Committee. A requisition was accordingly made to the Hon^ble^ Thomas Fitz Maurice, the then Sheriff of the county, who in consequence convened a meeting of the county at Mold, on Tuesday the 7th day of January, 1783, when a petition for a more equal representation was agreed to be presented to Parliament. This business being over, the Sheriff animadverted very severely upon the resolution which the Committee had entered into for translating into Welsh and publishing the pamphlet in question, the doctrines of which had struck him, as well as many other gentlemen, with horror. The Sheriff at that time warned the Defendant against the publication of the pamphlet, and declared that if he or any one else should dare to publish it, he should think it his duty, as Sheriff of the county, to take proper notice of the publication. The Sheriff concluded with moving for the dissolution of the Committee, which was carried. At this meeting the Defendant produced the Dialogue, read the whole through, and as he read it, he defended and applauded all its doctrines, without exception, and yet at the same time confessed that he was uttering this Dialogue with a rope about his neck.'[1]

The Dean, however, had no intention of giving way: the pamphlet was reprinted, and 'war to the knife' declared. Party feeling has usually run high in Wales, but at this period it was embittered to a degree scarcely conceivable in these peaceable days. Squibs of a most scurrilous description were circulated, and a wordy hostility was commenced in the local papers, which long survived the determination of the question at issue.

[1] From a MS. case.

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One caricature which lies before me professes to represent 'The Triumph of Turbulence, or Mother Cambria possessed.' Mother Cambria is habited in a cap and bells, with a demon attached to the cap, and is surrounded by a crowd of Welsh parsons, making a football of Liberty. The Dean, turning his back on a pillar, on which is inscribed Mansfield's dictum, 'Seditious, if not Treasonable,' is complacently surveying these antics from a Welsh car, drawn by six goats. Sotto voce he is supposed to say :—

> I've escaped with my ears, and from Newgate you find,
> And as to my honor that's left far behind,
> Which all the world knows, but Welsh goats whom I blind.

From the many squibs which were circulated I select the following as a fair specimen:—

'*Denbighshire Resolutions, at a Meeting held at Ruthin, 9th March*, 1784, *by order of the Dean of St. Asaph.*

'Resolved: That no meeting for this county can be held constitutionally, unless the Dean of St. Asaph and six of his parsons, at the least, are present, and that a late county meeting, in consequence of which Sir Thomas Kyffin[1] was knighted, being not composed of a proper number of clergy, was an imposition upon the Crown, and therefore the said Sir Thomas is no Knight, but a *simple* Squire only.

'Resolved: That for any private man or set of men to pretend to judge of, or to censure, the Parliamentary conduct of their representatives, is unconstitutional; but for such men to censure the conduct of the King, his Ministers, or either House of Parliament, and by

[1] Then High Sheriff.

any means to attempt a reform of them, is highly meritorious.

'Resolved: That the Right Honble William Pitt, being younger than the Dean of St. Asaph, is no conjurer, and that the Dean proved by his own dictum, at the late meeting at Mold, that Mr. Pitt's plan for reforming the Government in India was weak and childish.

'Resolved: That Charles James Fox and the Rev. William Davies Shipley are the greatest characters of the age, and that the King *must* (nolens volens), as was asserted at the late Flintshire county meeting, make the one his Plenipotentiary Prime Minister, and the other a Bishop.

'Resolved: That a late publication, for which the Dean of St. Asaph stands indicted by the Grand Jury of this county, is a harmless, innocent book; that the Grand Jury who found the Bill against him were idiots; and that the Dean hath manifested his abhorrence of sedition by his speeches at this and the late county meeting at Mold, in favour of Mr. Fox and the present Opposition to the Crown and Government.

'Resolved: That it is unconstitutional for any Peer to demand an audience of the Crown, or to approach any of the Royal palaces up the back-stairs, that road being the peculiar privilege of Ministers (under which word all the clergy are included) and Maids of Honor.[1]

'Resolved: That the thanks of this meeting be returned to the Members for the county[2] and bo-

[1] The allusion is of course to Lords Temple and Thurlow.

[2] Sir W. W. Wynn, Bart., who rarely attended Parliament.

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rough,[1] for their diligent and constant attendance and conduct in Parliament.

'Resolved: That the thanks of this meeting be given to Mr. High Sheriff, for his politeness in not attending, and leaving the conduct of it to the Rev. the Dean of S^{t} Asaph.'

'Resolved: That these Resolutions be transmitted (as was the requisition) to Mr. Samuel Sidebotham,[2] at Wynnstay, and, if he approves thereof, that the same be printed and dispersed, and that Mr. Sidebotham be requested to use his endeavours that the Dean of S^{t} Asaph may not be convicted of publishing a seditious book, he having for that purpose only become the *new friend* to the present Member for the county.

'Vivat Charles James Fox.

'Countersigned,

'WILLIAM DAVIES SHIPLEY.'

Mr. Kenyon received the first official information of the matter at the ensuing Assizes, when the following presentation was laid before him :—

'My Lord,—Several gentlemen of the counties of Denbigh and Flint wish your lordship w^{d} be pleased to give the enclosed Dialogue the reading, w^{ch} was printed by one Marsh of Wrexham; and sho^{d} you think it an improper publication, your observations upon its contents in your charge to the Grand Jury at Wrexham wo^{d} be esteemed a great favour by them; but sh^{d} it appear to your lordship a harmless one,

[1] The late Col. Myddleton, of Chirk Castle.

[2] Then Gentleman in Waiting at Wynnstay.

your opinion will be submitted to implicitly, w^ch^ will be understood by your silence.

'*To the Chief Justice of Chester,*
'*at Pool, Montgomeryshire.*'

This very improper attempt to commit a Judge to an opinion on a question which it was intended to bring before him in his official capacity, was not likely to receive any response, and I am unable to ascertain what were his private sentiments on the subject. One of his greatest friends in the Principality, the celebrated traveller, Thomas Pennant, was an enthusiastic supporter of the prosecution, and from some letters of his, to Mr. Kenyon, which I shall presently quote, it may be conjectured that Kenyon agreed with his friend; but he had too clear an understanding of the responsibility of a Judge, to implicate himself unofficially in the transaction. On an attempt, however, being made to induce the Government to undertake the prosecution, he seems to have had some correspondence with Mr. Wallace, then Attorney-General. The Government declined to move in the matter, but Mr. Wallace seems rather to have inclined to the opinion that there was ground enough to warrant a prosecution, though he could not advise the Government to undertake it.

James Wallace, Esq., to Lloyd Kenyon, Esq.

'31 July, 1783.

'Dear Kenyon,—I was in hopes to have seen you before you went on your Circuit, but it is now impossible, as I am this moment setting out for Margate.

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I have sent you the copy of the Indictment. Lee and I could not join in a Report; he thought the publication too vague to admit of the construction imputed to it.[1] I tho[t] it calculated to incite the people to arms: on public grounds, however, I gave no opinion upon that, as I tho[t] it an improper thing to take the prosecution out of the hands of Mr. Fitz Maurice.

'I am, ever yours,

'JAS. WALLACE.

'I think the Indictment will do, as the whole appears on the face of the publication, without the aid of any averment.'

The trial came on at the great Sessions at Wrexham, on the 1st of September, 1783. No sooner, however, had the Judges taken their seats, than an application was made by Mr. Leycester, one of the counsel for the prosecution, for a postponement, on the ground that pamphlets had been circulated amongst the jurymen, with the object of biassing their minds before the trial; and the prosecutor made affidavit to that effect.

Upon this a sharp discussion arose, Erskine urging the hardship which delay would entail upon his client, and attributing the attempt to the malice and trickery of the prosecutor. He concluded a fine speech with a handsome compliment to the Chief Justice, which I will venture to insert:

'From a long acquaintance with your lordship,

[1] Cf. this with Lord Campbell's assertion that Mr. Wallace was of opinion that the publication was *not* a libel.—Lives of the Chief Justices, vol. iii. p. 24.

which has always afforded me great pleasure and comfort, I rest with the greatest confidence your lordship will determine according to what you feel to be just; and no man knows better what justice is. However you may think the publication improper or may wish the Constitutional Society had not published it; tho' you may think with me that all these things had better have been let alone, and the administration of justice left to its ordinary course; though you may think it amounts to a misdemeanour, in being published at this time, and may wish to reprobate it in your charge to the jury, and may speak, not only to them, but to all under your judicial administration, in the same language; yet I persuade myself that, sitting in justice upon this particular trial, you will think that neither the rights of the Crown, nor the peace of the community, nor the administration of right, can be at all affected by this publication.'

It was evident, however, that it was impossible to expect an impartial verdict from the jury at a time when the public feeling was so much embittered. Every member of the jury, probably, had enrolled himself under one or other of the hostile flags. The Chief Justice, therefore, with the entire concurrence of his brother judge, the Hon. Daines Barrington, decided against the continuance of the trial.

'The single question now is,' he said, 'not whether the Dean of St. Asaph is guilty or not guilty, whether he is to be acquitted or convicted, but whether there may not be another season found out, in which this cause may probably be decided with more impartiality, when the minds of men may not be prejudiced by any

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such means as those which are the subject matter of this motion. . . . The Constitution of this country has done all that human prudence can do that justice should be administered by those who have no wishes upon the subject; it is for that reason that various challenges are given by law to a juryman. . . . . The question put to me is,—Is this the fit season to administer justice in the cause? It may be the fit season, in some men's apprehensions, that the cause should be heard; but is it the season to administer justice? Am I sure that this paper can have no effect upon any men's minds? The jury, I am sure, will not believe me to speak with any disrespect of them; the remainder of the jury may be composed of other men as honourable as those now in the box, and I know that there can be no men of more honour; but men's judgments may be imposed upon by their wishes, and submit to their passions.'

The trial was accordingly postponed. Eventually the prosecutor obtained a certiorari, and the case was tried at Shrewsbury before Mr. Justice Buller: on which occasion Erskine made the memorable speech which Mr. Fox is said to have considered the finest argument in the English language. The verdict agreed to, after the well-known controversy between Buller and Erskine, was 'guilty of publishing: but whether a libel or not, the jury do not find.'

Litigation, however, was by no means ended. Mr. Erskine first applied to the Court of King's Bench to grant a new trial, and on that being refused by Lord Mansfield, a motion was made in arrest of judgment; and the Court being of opinion, in opposition to the dic-

tum of Mr. Wallace, which I have quoted above,[1] that the indictment was defective (there being no averments to point the application of the paper as a libel on the King and his Government), the Dean was finally discharged from the prosecution. This celebrated trial ended, therefore, in a drawn battle; and both parties, as usual, claimed the victory. The Dean's party was overjoyed: he himself was dragged in triumph through the streets of Wrexham; bonfires were lighted, and the whole Principality went mad for a week. 'They dined in town,' remarks an eye-witness, 'and after dinner was over the Dean made an elaborate speech, in the course of which he said that he did not regret the prosecution he had undergone, as he had been the means of establishing the right of juries. Many curious toasts were then drank, such as confusion to the bagman at Lleweney and his posterity, to the Master of the Rolls[2] and his posterity, &c. &c.'

The following account is from the pen of Pennant, the traveller, who was one of the sincerest friends Mr. Kenyon ever had:—

Thomas Pennant, Esq., to the Master of the Rolls.

'Dec. 29th, 1784.

'Dear Sir,—Whatsoever steps are taken, I trust they may be founded on a certainty of success, otherwise things will be in a worse state then ever. The good sense of a majority of Peers will certainly bring on a favourable issue: as to the decision in the King's Bench, so contrary to former tenets, I need not point out to

[1] *Vide supra*, p. 119.

[2] Sir Lloyd Kenyon, so appointed 1784, May 30.

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you the cause. Our country last week experienced a very strong return of its paroxysm. The Dean was met some distance from Wrexham and brought in with all patriotic honours, his carriage divested of the horses and drawn by much more irrational animals. Numbers of the mob escorted him to Ruthin (a place far out of his way to his own home): there he gave a great dinner. All the lower part of the Vale met him there or beyond Denbigh, at which place the two-legged brutes seized his carriage and drew it to Llanerch, where they were received with bonfires, &c., and cockades were liberally bestowed in a manner which showed the most impudent profligacy in forming a triumph on an escape justly stigmatized by the very person who seems to have contrived his escape. The weakness, the instability, the want of principle in our country gentlemen, hurt me much. Is it not fit that Satire should exert herself to show to them and the public their hero in his true colours? I trust that what I directed to Mr. Sayer must and will be executed: I shall be mortified if it does not: yet it is not fit you or I should appear concerned. I conclude politics with my constant maxim, "*Purganda est commissio.*"

'I am, dear sir,

'Most faithfully y^{rs},

'T. PENNANT.'

This excessive exultation was certainly ill-timed and indecent, but the boast of the Dean was none the less a true one. His trial was primarily the means by which the rights of juries were established. An impulse was given to the conviction, which was gradually

gaining ground, that juries had a right to judge, in cases of libel, of more than the mere publication of the matter complained of; and the efforts of Erskine and others, which afterwards resulted in the passing of Mr. Fox's Act, were proportionately strengthened.

To this I shall have occasion hereafter to refer.

The following letter from the pen of Sir William Jones, though somewhat tardily inserted, seems worthy of preservation:

Sir William Jones to Lloyd Kenyon, Esq.

'University Coll. Oxford, 30th Sept. 1782.

'Dear Sir,—When I had the pleasure of dining with you the day before I left England, I little expected to pass my autumn at Oxford, and thought more of the Delaware than of the Isis; but the frigates were all full, and, among the merchant-men bound for America, some had miserable accommodation even for sailors, and the rest were not likely to sail till the end of this month; so that it would have been impossible for me to return before Christmas, and I could not stay longer abroad, without the wildest and most romantick sacrifice of my own reasonable views in life to the interest of my client; who, being too inactive to go without me, has been weak enough to come back (although he might have crossed the Atlantick with little danger), in defiance of those who have his large property in Virginia wholly in their power, and have called upon him to take possession of it under pain of confiscation. I trouble you with this account of myself, because your constant indulgence and kindness to me on all occasions

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give me abundant reason to believe that you honour me with your good wishes; and I may truly say, in return, that my knowledge of your firm integrity and virtues, publick and private, makes me more desirous of cultivating your friendship than that of most men living. As I had meditated a visit this autumn to the Bishop of St. Asaph, I was not without hope of being able to pay my respects to you in Wales, but the Bishop is now, I find, in Hampshire; and I shall go thither immediately after the Oxford Sessions. I lament the dissensions in the political world, at a time when nothing would be more salutary than a cordial union of all honest men; but I still hope that the best counsels will prevail, and I shall naturally be inclined to think those best, which the men, whom I most respect, shall approve. As to my own views, I am inexpressibly anxious to be delivered from the ruinous state of suspense about India, in which I have been near five years at the most important part of my life. Next to an appointment in Bengal, which I should accept with gratitude, a speedy refusal would be the highest obligation that could be conferred on me.

'Your last words to me were so kind, that I have perfect confidence in the success of your friendly interposition with the Chancellor on my behalf. I cannot but fear that I have undesignedly offended him; but this I can assure you, that when I imparted my wishes to my friends after the death of Mr. de Maibre, I never harboured a thought that any but the Chancellor would have the disposal of the vacant judgeship, and I considered him as the *sole* patron of it. But I have run the

length of my paper, and beg leave to repeat that I am, with very great regard, dear Sir,

'Your most obliged and faithful servant,

'W. JONES.'

Mr. Kenyon attended regularly to his Parliamentary duties while he remained in Opposition, speaking occasionally, and generally briefly, upon the various topics which came before the House.

He continued his crusade against public accountants, much to the disgust of Fox, who fancied that his father, who had been implicated in the very questionable transactions at the commencement of the reign, was the person specially aimed at. The public feeling, however, had been so thoroughly roused, that the Coalition Government was obliged to take up the subject. The new Chancellor of the Exchequer, Lord John Cavendish, accordingly brought in a Bill, founded on the principle of Mr. Kenyon's resolutions of the last session, making the auditors and tellers of the Exchequer payable by salaries instead of by fees. In the course of the debate, some stringent remarks were made with regard to a pension recently promised to Lord Thurlow, the ex-Chancellor. He was vigorously defended by his friends: so much so, that Fox whimsically observed that 'he had always noticed that however gentlemen of the learned profession might differ at the Bar or elsewhere, whenever the interest of a professional man was at all concerned, the esprit-de-corps shewed itself, and all united with firmness to carry the point for the brother.' Mr. Kenyon said that 'he had heard the learned lord say more than once that he never made any bargain what-

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ever when he accepted the Seals: but that when his Majesty put them into his hands in the Royal closet, he graciously condescended to assure him, that it was his intention to grant him a tellership of the Exchequer. How it happened that the grant was never regularly completed, he could no otherwise account for, than by stating that he well knew there was not a man in the kingdom who more disdained to express, or less felt anxiety about his own money concerns, than the learned lord. The fact was as he had stated it: the promise was given in 1778, and as the shears of reform were not then made sharp, in all human probability his Majesty had at that time no other intention but to give him the tellership in as beneficial a manner as it was then enjoyed.'

This praise was probably well deserved: in accepting the tellership Lord Thurlow only followed an example which was common at that time, of providing a sufficient compensation for his family in the event of his retiring from office.[1] When he was finally dismissed from office in 1792, the King strongly pressed upon him the acceptance of an earldom and a retiring pension, both of which he unhesitatingly declined.

During this session Mr. Kenyon was violently attacked by Sheridan for an opinion he had given in his legal capacity on the subject of the receipt-tax. Mr. Sheridan had made some capital out of an accident, by which the opinion had appeared in the public prints side by side with another signed 'Oliver Quid.'

[1] Cf. Letters of George III. to Lord North, in Correspondence of Lord North, vol. ii. pp. 195, 196: 'I shall certainly offer him (Lord Thurlow) a security equal to the pension Lord Camden holds, to take effect whenever he quits the Great Seal,' &c. &c.

Mr. Kenyon, in a speech which is reported to have been 'tartly delivered,' contended for the 'justice of the public opinion he gave; but as to the question of decreasing the revenue by its appearance in print, he denied the truth of such an insinuation. He then stated the grounds upon which he had proceeded to give his opinion in the case that had been submitted to him, and said he was not conscious that he had deserved the reprehension the hon. gent. had been pleased to bestow upon him, and that in language which was not calculated to conciliate the minds of men; but that by putting the opinion of professional men and that of "Oliver Quid" upon the same footing, the hon. gent. had lowered himself, not them. With regard to sending to the newspapers, he had no connection with them, he never wrote a paragraph for them, nor paid newswriters for such rubbish. He was not solicitous of newspaper fame, nor were all the prints of the metropolis retained in his service, though they might be in the service of others.'

That a Government composed of such heterogeneous materials, and forced on an unwilling Sovereign by the mere strength of faction, should long retain the reins of power, was not probable.

Disinterested observers had early foreseen the difficulties in its path. 'The coming together of Lord North and Mr. Fox,' said Mr. Hill, M.P. for Shropshire, 'would, like the meeting of an acid and an alkali, cause only a violent fermentation which would destroy them both.'[1] 'The image,' writes Cowper, 'which Nebuchadnezzar saw in his dream, was made up of

[1] Sidney's Life of Sir R. Hill, p. 311.

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heterogeneous and incompatible materials, and accordingly broken. Whatever is so formed must expect a like catastrophe.'[1]

The fate of the Government was precipitated by the arrogance and imprudence of its principal member. Fox's famous India Bill proved the death-warrant of his Administration. Lord North himself disapproved of its violent character, and characterized it as a good receipt to knock up an Administration.

'That curse of India,' writes Lord Loughborough, 'will be the ruin, first, of the Administration, and then of the country.'[2] 'Fox drives most furiously,' writes Mr. Gibbon, 'yet I should not be surprised if Pitt's moderation and character should insensibly win the nation, and even the House, to espouse his cause.'[3]

The conduct of the King in caballing against the Coalition appears to have been somewhat too harshly arraigned. It may be doubtful whether, under any circumstances, a Sovereign can be legally justified in such a proceeding. Such an admission would be most disastrous in its effect on the freedom of parliamentary government. But if ever a king was justified in unconstitutional measures, it would appear to have been George III. in dismissing the Coalition Ministry.

The Sovereign enjoys the constitutional right of choosing his own Ministers. But this was precisely what Fox and his adherents practically denied him.

Compelled to accept them, the King considered his position as one of war à outrance. He only awaited

[1] Southey's Life of Cowper, vol. iv. p. 256.
[2] To Mr. Eden—Auckland Correspondence.
[3] Gibbon's Miscellaneous Works, vol. i. p. 649.

a favourable opportunity to dislodge them. This is evident from his correspondence with Lord Temple, and indeed from the history of the whole transaction. His provocation had been severe, and in the case of Lord North, singularly undeserved. Even after he had yielded, they had offered him a personal insult in the matter of the Prince of Wales' allowance. And, to crown all, he had now the authority of his ex-Chancellor and Lord Temple, for believing that to give his assent to the India Bill would be to hand over his crown to Mr. Fox. The danger was imminent; for the Bill had passed the House of Commons, and would assuredly have been carried through the House of Lords. A more dignified course might have been to have vetoed the Bill, and appealed to his subjects to support him.

The result of such a course was, however, most doubtful; and his position in the event of failure would have been almost untenable.

Whatever may have been the merits of the case, the result was eminently successful. It put an end to the succession of weak Governments, which had imperilled the greatness of the country, and inaugurated the brilliant career of England's greatest Minister, William Pitt.[1]

It has often been a matter of surprise, that when Pitt was commissioned to form a Government, he did not apply to Lord Shelburne for his aid. I happen to have it on record that he was strongly pressed to do so by several of his partisans, and especially by Mr. Kenyon. He, however, absolutely refused, giving as

[1] Cf. on this subject Bishop Watson's Anecdotes, vol. i. p. 205.

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his reason that he was an impracticable man to act with.[1]

Lord Thurlow was again appointed Chancellor, and Mr. Kenyon returned to his former position as Attorney-General. He appears to have accepted the office reluctantly. 'Mr. Kenyon,' writes his wife to her sister, 'is once again made Attorney-General. Mr. Pitt wrote to him this morning. Mr. K. went and told Mr. Pitt, he would much rather not accept the place, but would support his Administration as steadily out of office as in, and should not think himself neglected if he was left where he was. Mr. Pitt said, it was impossible to go on without him, and everybody says he must have it.' This little incident is curiously illustrative of Mr. Kenyon's simple, unambitious nature. Throughout his whole public career, he never accepted any office but one, the Chief Justiceship of Chester, without real reluctance. Fond of domestic life, the stormy debates and personalities of the House of Commons were singularly uncongenial to him, and he grudged every hour saved from his legal occupations, which he was obliged to devote to his Parliamentary duties.

The choice was not at present open to him. Pitt had not a single Cabinet Minister to support him in the House of Commons, and it was absolutely necessary for him to have a law officer upon whom he could thoroughly depend.

Pepper Arden did not shine in the House of Commons, and of the rising lawyers, John Scott, who alone occupied any considerable position in the profession,

[1] From private information.

had not yet made his mark as a debater. Mr. Kenyon, on the other hand, though not a fluent speaker, was looked up to and respected by all, from his almost unequalled legal reputation, and from the notorious honesty of his personal and political character.

'In matters of moment,' says a friendly critic in one of the public prints, 'the Minister should consider that great weight is paid to those who argue a point. *He* should therefore on these occasions exert *himself; he* commands attention; or he should desire Mr. Wilberforce or Mr. Grenville, or even Mr. Dundas, to be principals; but to leave the great points to Lord M——n, to Mr. P. A——n, and to Lord M——e, will always give the opportunity of ridicule to the members of the Opposition. Mr. Kenyon should be the leading law character, and next to him Mr. Dundas.—Mr. A——n, and Mr. M——d, are best when silent. This is a paragraph sent by a person who calls himself an old Member of Parliament, and who being a constant correspondent to the paper, is entitled to the indulgence he claims for the insertion of a paragraph, which he avers to have for its foundation the general sense of the House of Commons.'

These remarks bear so strong a resemblance to those of Sir N. Wraxall, that I am tempted to believe they must have emanated from the same pen. 'No part of Pitt's ministerial machinery,' says he, 'exposed him to comments so severe, or to ridicule so pointed, as the selection of Arden and Macdonald for the posts of Attorney and Solicitor-General. The Master of the Rolls, however fiery in his temper or coarse in his manners, was universally acknowledged to be a lawyer

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of profound professional knowledge. But Arden's merit seemed to consist principally in the strong predilections manifested towards him by the Chancellor of the Exchequer. Not that he was destitute of considerable talents; but his person ignoble; his countenance, which, though it did not absolutely want a nose, yet had only a very defective feature of that name;[1] his manners flippant, noisy, and inelegant, excited animadversion; nor did he compensate for these defects by any superior jurisprudential acquisitions.'[2] Unsupported by Pitt's favour, never would Arden have reached the heights of the law. As little would Macdonald have attained that eminence by eloquence, energy of character, or great endowments of mind. His connections of birth and of alliance, rather than his legal ability, finally made him Chief Baron of the Exchequer. It was already evident, in 1785, that Scott must outrun every competitor at the Bar.'[3]

The struggle, as is well known, ended in the triumph of the Minister and the entire discomfiture of the Opposition. The last manœuvre of the Whigs is the strangest perhaps ever recorded in the annals of party warfare.

On the 24th of March, the Attorney-General was hurriedly summoned by the Chancellor, whose house had been broken into in the night. The Great Seal had disappeared. The situation was a strange one, and the lawyers were sorely puzzled how to act. At length, after consulting Earl Gower, the President of

[1] It was said of him, 'Non cuicunque datum est habere nasum.'

[2] I can by no means agree with this sweeping view of Arden's abilities. Lord Campbell says his judgments at the Rolls are among the best of the date.

[3] Wraxall's Memoirs, p. 342.

the Council, and examining the Council books, they decided that the only remedy was to order a new Seal to be made, and to hope that some of the virtues of the defunct bauble might be transferred to its successor.

Before Parliament was dissolved, Sir Thomas Sewell, who had long been ailing, died, and the Mastership of the Rolls was at once offered to Mr. Kenyon. He was very loth to leave the Bar for an office the proceeds of which were very small, and he was especially reluctant to give up the Chief Justiceship of Chester. Pitt, however, pressed the office upon him, and Lord Shelburne, to whom he applied for advice, strongly urged him to accept. He was perhaps influenced in his decision by the recollection of a dangerous attack of illness, which had kept him for several weeks at the beginning of the year from attending to his business: a warning that his health might not prove equal to the arduous duties which devolved upon the Attorney-General. He thus records his decision:

'*March* 28.—With the Chancellor and with Mr. Pitt, about the Mastership of the Rolls, when I promised (reluctans) to Mr. Pitt to accept of it. The Chancellor much displeased he had not been more consulted on the law arrangements, and thought Chester and the Attorney-Generalship too much for Arden.'[1]

This is the first intimation of the existence of that mutual jealousy which not long afterwards estranged the Chancellor and Mr. Pitt.

'*March* 29.—Executed this day a surrender of my office as Chief Justice of Chester!!

[1] Diary, March 28, 1784.

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'*March* 30.—This morning I gave opinions for the last time as a professional man. Dined at Lord Chancellor's, and was sworn into the office of Master of the Rolls.

'*March* 31.—Kissed the King's hand.

'*April* 2.—Sworn at St. James's a member of the Privy Council.'

In closing the record of our lawyer's life at the Bar, it may be proper to take a short retrospect of a career in many respects singular.

Mr. Kenyon was at the Bar about twenty-two years, and for sixteen in large practice. During that time he made upwards of eighty thousand pounds, of which a large portion was derived from giving opinions. This extraordinary success was attained by a man who wanted many of the more brilliant qualities which bring a lawyer into notice.

He was no orator, no advocate, and in fact was only engaged in two criminal trials of any importance. He had none of the charm of manner, or power of conversation, which distinguished Erskine, or Romilly. His manners were rough, and his conversation was apt to degenerate into argument.

He had no influential connections to assist him; his friendship with Dunning, and afterwards with Thurlow, was of great advantage to him, no doubt, in making his name known outside the profession; but his reputation was established by his own efforts, if his success was in some measure expedited by the countenance they afforded him.

That success was the result of genuine hard work, and consummate ability, and a peculiar aptitude for

his profession. 'He was prudent,' says Mr. Townshend, 'patient and persevering.' Probably no man ever really loved the law as Mr. Kenyon did. This devotion to his profession was in his early days a source of some merriment to his friends. His friend Vansittart thus quizzes him:— CHAP. VI. 1784.

> Take Kenyon and put him in trammels of Law,
> And give him a case and set him to draw. [1]

Years afterwards, Mr. Wilberforce, writing to Stephen, says:—

'I do not give you credit for the same innate love of law which makes Kenyon bring home cases to be answered, as another man would crack walnuts, when sitting tête-à-tête with Lady K. after dinner.' [2]

Of the genuineness of Kenyon's abilities there can, I think, be no doubt; if there were any, the voracity with which his opinions were swallowed up, would be sufficient proof. In one year he made three thousand guineas by opinions alone—a legal feat, I should imagine, rarely equalled, even in these days of litigation.[3] The especial merit of his opinions was their terseness and accuracy; and their popularity was enhanced by the rapidity with which the cases were answered. Mr. Gurney used to say, he remembered an instance of a clerk, going round the Temple with his cases, being called in by Mr. Kenyon's clerk, to take the answer which had been written while he was

[1] The unequal manner in which fortune distributes her gifts is expressed in an accompanying distich, which perhaps refers to the author:

> 'Atque ego (nam memini Trojani tempora belli)
> Pinguis eram, sed edax me quoque Tempus edit.'

[2] Life of Wilberforce, vol. iii. p. 81.

[3] It is said that Lord Tenterden made in one year 8,000*l.* by Chamber practice.

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delivering the others. Lord Denman, in 1844, mentioned two opinions of Mr. Kenyon's, which he had lately seen. The first was—'I think this is a very doubtful case.' The second—'I see no reason to alter my former opinion.' There was certainly no unnecessary verbiage in these, but it may be doubted whether solicitors would now be satisfied with so short and unsubstantiated a document. Lord Eldon makes the following remarks on Mr. Kenyon's merits as a case-answerer:—'When I got into considerable business at the Bar, I was much resorted to by professional persons, laying cases before me for my opinions. Lord Kenyon, when at the Bar, made one year, of which he showed me evidence, by opinions only, about three thousand pounds—at that time, according to the rate of fees given to counsel, a very large sum. It was, however, his rule to consider himself as only required to read the case as it was stated to him, and to give such opinion as his general knowledge enabled him to give upon reading it, without looking for further information as to matter of law, by looking into books.

'When he afterwards became a Judge in Equity, the rule by which he governed himself, as to the facts of the case, was to consider himself as not bound to seek for further information as to those facts, than as the diligence of counsel had stated them: and his judgment was usually given without assisting himself by more than his general knowledge of law enabled him to aid himself at the conclusion of the counsel's reply. It is due to the very great law learning of Mr. Kenyon, afterwards Lord Kenyon, to record that no lawyer in my days could, in this way of pro-

ceeding, do so much justice to parties consulting him, or before him for judgment, as he could.'

. . . . . .

'No contemporary of Mr. Kenyon gave so many opinions as he did. The gentleman who appeared to stand next as to the number was Mr. Dunning.'[1]

Mr. Kenyon's capacity for labour was very considerable: he rose early, and could work late, without incurring the disagreeable consequences which some anxious men experience. He was a very temperate, perhaps almost an abstemious man; and had, especially in his early days, the great incitement to work, namely necessity. His finances were most slender, and he had nothing but his brains to fall back upon. Once asked by a rich friend to give his advice to a young man, who was anxious to succeed in his profession, he is said to have quietly answered,—'Sir, let the young man forthwith spend his fortune, marry, and spend his wife's, and then he may be expected to apply with energy to his profession.'[2]

Dunning used jokingly to say of Kenyon,—'I know Kenyon better than you do. I remember him when he was just caught. He tried to put on shoes, but it wouldn't do.'

His reputation with the profession may be gathered from the following anecdote:—

In a cause tried at Shrewsbury, Mr. Kenyon was employed on the wrong side. The Judge, however, Blackstone, mistook the case, and was about to give judgment for him. He accordingly went across the

[1] Life of Lord Eldon, by Twiss, vol. i. pp. 137–139.

[2] Townshend's Lives of Eminent Judges, vol. i. p. 37.

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court and showed Blackstone how he had mistaken it, and judgment was given accordingly. Bearcroft, who was on the other side, said, 'I think it's with us, for Kenyon does not set his shoulders to it.'

On another occasion, Thurlow, Scott, and Kenyon were dining together, when the conversation turned upon a case that had been argued that day before Lord Thurlow, by Scott: and the former asked Kenyon his opinion upon the decision. He then proceeded to state Scott's argument, but the latter interrupted him, saying, 'No! no! I argued thus —'

'Well then', said Kenyon, 'if that was so, Scott is right you know.' 'Do you think so?' said Thurlow. 'Indeed I do,' replied the other, giving his reasons.

The following morning, on taking his seat, the Chancellor said, 'Mr. Scott, I am desirous of hearing that case of —— v. —— re-argued.'

A day was appointed, the case was re-argued, and Lord Thurlow gave judgment for Mr. Scott's client, instead of the other.

Mr. Kenyon's private character has been somewhat sneered at, by a previous biographer, who, guided partly by the disappointed Jekyll, and partly by a love of anecdote, has founded his remarks upon evidently unauthenticated stories.

If not an amiable, it was a most striking character. In those days of bad morals and hard swearing, it is no unmeaning boast to be able to say of a man, that he was exemplary in his morals, and temperate in his habits. It is true that the pamphleteers sneered at the *immaculate* Pitt for like reason. In such company I am content to leave the subject of this biography.

'Malo cum Platone errare quam cum aliis vera sentire.' For the rest, he had inherited a hot and peppery temper, which, though he constantly tried to curb it, often got the better of him. I know of no instance, however, of his quarrelling with his friends, who were all sincerely attached to him, and were frequently his guests, both at Gredington and in Lincoln's Inn Fields. In his own circle he was most affectionate and considerate; a tenderer husband or a better father never existed; and the genuineness of his friendships may be appreciated from a consideration of the fact, that four of them at least endured over a quarter of a century.

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'Amicitiæ sempiternæ, inimicitiæ placabiles.'

CHAPTER VII.

Election of 1784—*The Westminster Scrutiny—The Rolliad—Trial of Warren Hastings—Resignation of Lord Mansfield—Sir Lloyd Kenyon appointed Lord Chief Justice of England, and created a Peer.*

(1784—1788.)

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1784.

At the general election which secured the ascendancy of Mr. Pitt, Mr. Kenyon was returned to the House of Commons as Member for Tregony, a diminutive Cornish borough, which was swept away in the general proscription of 1832. It is said he was anxious to retire from Parliament, but was persuaded by Mr. Pitt to purchase his return. I can find no authority for the assertion: at any rate, the few months succeeding the meeting of Parliament were the busiest of his House of Commons career. The elections throughout the country had been fiercely contested: but it was upon the progress of the Westminster election especially, that all eyes were fixed. 'All minor election interests,' says Wraxall, 'were swallowed up in this struggle, which held not only the capital, but the nation, in suspense. while it rendered Covent Garden and its vicinity, during successive weeks, a scene of outrage, and even of bloodshed, resembling the Polish dietines.'[1] The perusal of the records of this celebrated contest will force even the most confirmed cynic to admit the improvement

[1] Wraxall's Memoirs, p. 5.

which has taken place in the management of elections; however far we may yet be from the attainment of that perfect immunity from bribery and intimidation, which it must be the desire of every public man to see established. I doubt whether corruption, in all its forms, will ever be absolutely 'conspicuous by its absence,' so long as the employment of paid canvassers continues to be recognised. The abolition of this overgrown army would be fatal to those who make a trade of their privilege, and would render the ballot, which is at best a confession of public immorality, unpopular and superfluous. To return. The Westminster election of 1784 was conducted by canvassers of all descriptions, paid and unpaid, male and female. The candidates were Lord Hood, the great naval commander (whose election was never in doubt), Sir Cecil Wray, and Mr. Fox. For forty days the polling-booths continued open, and during the whole of this time no effort was spared to gain the day. The great Whig ladies did not scruple to use their fascinations in favour of Mr. Fox. The Tories replied by inducing the Countess of Salisbury to lend her aid.

> Ten poll for one mansion, each proving he keeps it,
> And one for each chimney—he'll prove that he sweeps it;
> With these mix the great, on rights equally fables—
> Great peers from poor lodgings, great lawyers from stables;
> Ev'n the soldier whose household's a sentinel box
> Claims a questionless franchise 'gainst freedom and Fox:
> All dubbed and maintained, upon influence regal,
> Of the new H—e of C——s constituents legal.[1]

The principal landowners voted for Sir Cecil Wray. The new Master of the Rolls, whose house in Lincoln's

[1] Rolliad, p. 98.

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'Inn Fields lay just without the liberties of Westminster, is said to have qualified himself by sleeping for several nights in his stables: a proceeding which drew down on him all the truth and ridicule which the Whigs could compress into the 'Rolliad,' then in all its glory.

At length, on the 17th of May, the numbers were declared as follows:—

	Votes.
For Lord Hood . . .	6,694
,, Mr. Fox . . .	6,234
,, Sir C. Wray . . .	5,998
Majority for Mr. Fox .	236

The defeated candidate was not content to accept the verdict: but demanded a scrutiny, which the High Bailiff of Westminster, one Thomas Corbett, was foolish enough to grant, notwithstanding the protest of Mr. Fox and others. Instead, therefore, of making a return to the House of Commons, he stated the proceedings, the number of votes recorded, and added that he could not make any other return, till the scrutiny should be determined. On the meeting of Parliament, Westminster was unrepresented: but Fox took his seat for the united boroughs of Kirkwall and Orkney, where he had been elected, after a contest, by the influence of Sir Thomas Dundas.

The course pursued by the High Bailiff occasioned one of the most bitter contests ever waged within the walls of Parliament: the lawyers more particularly distinguishing themselves on either side.

'To Kenyon in an especial manner,' records Wraxall, 'was committed, by Pitt, the arduous task of defending

the High Bailiff of Westminster, justifying the scrutiny instituted by that returning officer, and preventing Fox from enjoying the solid fruits of his late hard-earned triumph. So invidious a commission could not have been delegated to a more able head, or executed with more legal skill.'[1]

Mr. Fox's supporters relied principally on a recent Act of Mr. Grenville's, which had regulated the law concerning election petitions. They argued that the writ was returnable on a day specified therein, and that the High Bailiff was bound under any circumstances to obey the exigency of the writ, and that he was for all intents and purposes functus officio, and powerless to take any action on the arrival of the said day. They said, further, that even granting the legality of the course taken, it was a precedent neither expedient nor equitable, disrespectful to the House, and entailing great hardship on the individuals concerned.

This argument in misericordiam was practically confirmed by the result, for after the scrutiny had continued for upwards of a year, the process was found to be so slow, that it had only been concluded in one parish, and that there the balance of votes gained by Sir Cecil Wray only amounted to 20. At this rate of proceeding, it was easily conceivable that the scrutiny might outlive the Parliament, and the election be practically void.

The attack on the scrutiny was entrusted first to Lee, who had been Solicitor-General under Kenyon in Lord Rockingham's Government.

Grounding his argument upon the Act 10 & 11

[1] Wraxall's Memoirs, p. 76.

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William III. cap. 7, he said that 'the conduct of the High Bailiff appeared to him to be such, that he held himself warranted as a lawyer in saying that it was illegal and contrary to his known duty, and to the express and positive law of the land . . . If there was one principle in parliamentary law more clear or more indisputable than another, it was this, that a writ ought to be returned on the day on which in the writ itself it is made returnable.'

Mr. Sheridan followed on the same side, and was answered by the Master of the Rolls.

His Honour said that 'nothing had ever surprised him more than the conduct of his learned friend (Lee), who ought to be so strict an observer of those principles laid down by law and reason, without which justice could not be administered between man and man. The great principle to which he alluded, and which his learned friend seemed to have overlooked on the present occasion, was that which bound a judge not to condemn on partial evidence, and not to punish any man without having first given him a hearing. "Audi alteram partem" was an eternal and immutable law of justice, by which every tribunal was bound. But it was not a little singular, that while his learned friend was condemning a returning officer for what he called a breach of the law, he was endeavouring to persuade the House to violate the most obvious rule of law, justice, and equity: for he was calling for censure and punishment on the High Bailiff, without giving that gentleman an opportunity to defend himself. If, upon hearing, the returning officer should be found to have transgressed, it would be proper that he should be

punished; but as guilt must ever precede punishment, so inquiry should precede conviction. Was the House in possession of the reasons that induced the High Bailiff to grant a scrutiny, and to make that kind of return which had been read at the table? If those reasons were as yet unknown to the House, would it not be premature, would it not be a perversion of the laws of justice, to condemn the man unheard, untried? The learned gentleman knew very well that the right of demanding a scrutiny was a common-law right, and the Act for regulating the elections in the City of London recognised this right, when it said that if a scrutiny is legally demanded, &c. If then it was legal to demand it, it must be legal to grant it. The learned gentleman insisted that the writ being returnable at a particular day, the power of the officer who acted under it expired on that day: and that he could not legally act under it after that day, and consequently that he ought not to have granted a scrutiny, because, said the learned gentleman, after the return-day, he could not legally carry it on. The learned gentleman ought to know that there were other Courts out of which writs issued, as well as out of Chancery, and that when a Sheriff gave a sufficient reason for not having executed the writ, the Courts would excuse him, and enlarge the term. For instance, when a fieri facias was issued to a Sheriff, and in consequence of it he seized the defendant's goods, if he had not time to sell them before the day on which the writ was returnable, he stated the special matter in his return, and the Court then gave him a longer term. Or supposing he should make this return, which would be more

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apposite to the present case, that having been directed to sell the goods of A., and having taken possession of goods which he supposed to belong to A., they had been claimed by B. as his property; that, doubting therefore to whom they really belonged, he had not sold them, but had instituted an inquiry, and was going to hold a court de proprietate probandi, and that he would cause the goods to be sold, if he should find they were the property of A. In this case the Court would of course renew the writ, and order him to proceed. To this case was perfectly analogous that of the late election for Westminster; and this House would, he hoped, do what the Courts below would certainly order on a similar occasion. As to Mr. Corbett, he was totally unacquainted with him, but he heard he was a gentleman far advanced in years, of very good character, and large fortune, and that he was an impartial officer, unconnected with any party; he hoped therefore that the House would, with respect to him, rigidly adhere to that principle of law and justice which forbids the condemnation of any man unheard. Trusting therefore that the House would not shut their ears to the good old maxim, 'Audi alteram partem,' he intended to move the previous question, in order that a motion might afterwards be made for ordering the attendance of the High Bailiff at the Bar of the House to answer for his conduct.'

Sir Thomas Davenport said 'the late election had been a scrutiny, especially the latter part, for to his certain knowledge the vote of the Master of the Rolls had been refused, and although admitted at last, was a doubtful vote.'

The Ministers carried the previous question by 233 votes to 136. Mr. Fox and his friends were not satisfied with this decision, and the following day petitioned that the House would immediately order the High Bailiff to make a perfect and proper return to a committee under Mr. Grenville's Act.

This was opposed by Lord Mulgrave, who moved a resolution to the effect that the petition did not come within the description of a petition complaining of an undue election, as defined by Mr. Grenville's Act.

In seconding the motion the Master of the Rolls thus further dealt with the subject:—

'The Act of Mr. Grenville, of which he thought highly, clearly regarded sitting Members only, and provided for the trial of an election cause between parties.

'In the present case there were no parties; there had been no election; there was no return. It was impossible to say who was chosen; and there was but one petitioner.

'If he were to give his opinion upon the paper that had been delivered to the Sheriff by the High Bailiff, he should certainly not pronounce it a return of Members; for it stated not who were, according to the returning officer, duly elected. It was merely a return of another kind; a history of the proceedings at the Westminster poll, an account of the res gestæ, by way of apology, made by the High Bailiff to the Sheriff, as a justification of himself for not being able to make a complete return.'

Mr. Fox 'was free to confess that upon one point he was rather inclined to the opinion of the learned

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gentleman, and that was merely with respect to the return, but though the petition was not within the letter of Mr. Grenville's Bill, he was persuaded it came within the spirit of it.'

The question was thus brought within very narrow limits, and it is strange that, while the difference between the parties was so slight, some attempt at a compromise was not attempted. The Ministry were, however, elated with their recent triumph on the hustings, and were determined to shew their strength. Opposition did not dare to divide, and, the week following, another petition was presented, praying that the scrutiny might proceed. The petitioners were heard by counsel, on the 2nd of June. It was upon this occasion that Mr. Kenyon showed how completely the real generosity of his character was proof against the irritating process of a great party fight.

By a chance, which it is said occurs to every man once in a lifetime, Mr. Garrow, then a young and unknown barrister, had received a brief for Mr. Fox. 'I went to the House,' says he of himself, 'and Mr. Douglas (Lord Glenbervie) was first heard on the petition. I made my speech, determined to suppress no portion of my opinion, unless compelled by authority.'

'As soon as Mr. Garrow had concluded, the Master of the Rolls, who had been in the House during the whole of the speech, rushed to the bar, and seizing him by both hands, exclaimed: "Young man, I congratulate you! you have made your fortune, young man! I never heard a finer speech in all my life." Such was the high and honourable professional im-

pulse of this great lawyer, which could control and surmount every political and party prejudice. Some years afterwards, when Mr. Garrow was in great practice, he thought the time had arrived when he might apply for rank; but his native diffidence and distrust of himself made him doubtful. He consulted his friend Mr. Mainwaring, the Chairman of the Middlesex Sessions, and Member for the county, who had observed his progress with friendly interest, and having received from him every encouragement, he waited on Lord Kenyon, then Chief Justice of the King's Bench. On his name being announced, his lordship came into the room, and anticipating his business, exclaimed, "So, Mr. Garrow, you want a silk gown, I suppose? I have been expecting your application these two years." A recommendation went immediately to the Lord Chancellor, and, without further solicitation or delay, he obtained that elevation which has often been withheld or delayed, when applied for by gentlemen of much longer standing, and of undisputed learning and ability.'[1] These good offices were never forgotten by the recipient: many years afterwards he writes to Lord Kenyon: 'I entreat your lordship's permission to embrace this opportunity of returning my grateful acknowledgments to your lordship for that kind and very important attention with which, without the least pretension on my part, your lordship has been so good as to honor me.'

These traits of character are so honourable to both the parties concerned, that I make no apology for the digression.—To return to the Westminster scrutiny.

[1] From a Memoir of Sir W. Garrow.

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Mr. Fox was indefatigable in his endeavours to put an end to the scrutiny. On the 8th of June, in a long and powerful speech, he vigorously attacked the policy of the Government. 'It is difficult,' says an above-quoted writer, 'to convey an adequate idea of the oration. It comprised all that eloquence, sustained by a just cause, could combine to persuade or to gain over his judges; but, however brilliant might be the matter, it wanted prudence in its conception and brevity in its delivery.'[1] After attacking seriatim all those who had prominently advocated the scrutiny, he thus rather severely visits the Master of the Rolls, with whom he had been on no terms of cordiality since the dissolution of the Shelburne Administration:—

'A third person there is, whom I might, in reason, challenge upon this occasion: a person of a sober demeanour, who, with great diligence and exertion in a very respectable and learned profession, has raised himself to considerable eminence (the Master of the Rolls); a person who fills one of the first seats of justice in this kingdom, and who has long discharged the functions of a Judge, in an inferior but very honourable situation. This person, Sir, has, upon this day, professed and paraded much upon the impartiality with which he should discharge his conscience in his judicial capacity as a Member of Parliament in this cause. Yet this very person, insensible to the rank he maintains, or should maintain, in this country, abandoning the gravity of his character as a Member of the Senate, and losing sight of the sanctity of his station, both in this House and out of it, even in the very act of

[1] Wraxall.

delivering a judicial sentence, descends to minute and mean allusions to former politics—comes here stored with the intrigues of past times—and, instead of the venerable language of a good judge and a great lawyer, attempts to entertain the House by quoting, or by misquoting, words supposed to have been spoken by me, in the heat of former debates, and in the violence of contending parties, when my noble friend' (Lord North) 'and I opposed each other. This demure gentleman, Sir, this great lawyer, this judge of law and equity and constitution, enlightens this subject, instructs and delights his hearers, by reviving this necessary intelligence, that, when I had the honour of first sitting in this House for Midhurst, I was not full twenty-one years of age; and all this he does for the honourable purpose of sanctifying the High Bailiff of Westminster, in defrauding the electors of their representation in this House, and robbing me of the honour of asserting and confirming their right, by sitting as their representative. Against him, therefore, Sir, and against men like him, I might justly object, as a judge, or as judges, to try my cause; and it is with perfect truth I once more repeat, that I have "no reason to expect indulgence, nor do I know that I shall meet with bare justice in this House."'[1]

The Ministers again triumphed, and the question was not again debated until the following year.

But, by degrees, as the unsatisfactory progress of the scrutiny became known, the mistaken policy of Mr. Pitt and his followers was recognised, and a great revulsion of feeling took place. The opinion began to

[1] Parl. Hist. vol. xxiv. pp. 886, 887.

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gain ground that Mr. Fox was hardly used in this matter, and that there was truth in the remarks he had himself made, that, if ultimately he lost his seat, it would be for want of money, not for want of a legal majority of voters; while Westminster would be deprived of its franchise, because he was unable to prosecute a pecuniary contest with the Treasury.

The Ministers, however, continued to support the scrutiny until it became evident they were endangering their existence by so doing.

On a motion of Mr. Pitt for the adjournment of the House, in order to avoid a decision on an amendment of Mr. Welbore Ellis, he was beaten by 162 votes to 124. This killed the scrutiny; and, on the following day, the return was made, and Mr. Fox and his colleague took their seats as Members for Westminster. The Master of the Rolls, nevertheless, still maintained his opinion.

'He had given it as his opinion, and he begged to be understood that, whenever he presumed to deliver an opinion in that House, he did it with the most solemn regard to truth, and with the rigorous impartiality of a judge: he had,' he said, 'given it as his opinion, that the scrutiny was perfectly constitutional, and was warranted by the law of the land. There was not, in his mind, any order so positive in the writ, nothing so urgent, in what was called the exigency of the writ, as to take from the returning officer his discretion. The writs of the Sheriff had been mentioned, and an hon. gentleman had said that, on the day of the return of these writs, no excuse could be admitted by the Courts. He must beg leave to set the hon. Member right in

that particular. Nothing was more common than to excuse the Sheriff on a plausible reason being assigned, and the cases were so far similar that the exigency on both writs was the same. In regard to the legality of scrutinies, they surely would not be contested by any man acquainted with the law books. They were as ancient as the Constitution itself; and many cases had occurred of petitions being presented because a scrutiny had been denied.'

On a motion for expunging the proceedings from the Journals the result shewed that, though driven from an untenable position, Mr. Pitt was still paramount in the House. During a very stormy debate Sir Lloyd seems somewhat to have lost his temper.

'The gentlemen on the other side had treated him with personalities which he did not like, and which did them at least as little honour as him. It was not long ago since an hon. gentleman (Mr. Montague) contested his right to a seat in that assembly: the same kind of sarcasm had been pretty frequent from others of the same way of thinking; and to-night he had been told that he was the keeper of the conscience of the majority of the House. How far he was entitled to such an appellation, the hon. gentlemen best knew who bestowed it, but he would appeal to the House, whether such a line of debate became them.'

The motion for expunging the proceedings was lost by a large majority; and a Bill was afterwards introduced and carried, defining more strictly the course to be pursued in the conduct of election petitions.

Lord Russell is very severe on the legal supporters

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of the scrutiny, whom he accuses of endeavouring to substitute 'chicanery for law.'[1] With great submission to so high an authority, it may be said that the illegality of the scrutiny was never proved, and that it was necessary to pass a special Act to prevent the recurrence of a similar case. Mr. Fox himself, as I have above quoted, allowed that, strictly speaking, Mr. Grenville's Act would not apply. The lawyers, therefore, were perfectly justified in falling back upon the common law right. But, whatsoever may have been the legal right or wrong of the question, there can be no doubt the Ministers were guilty of a grave political error, in availing themselves of their technical rights. This conduct bore too strong a resemblance to personal rancour against Mr. Fox; whilst the end they proposed to attain, his exclusion from the Parliament, was unworthy of a great and victorious party. From this censure, though he was not a member of the Administration, Sir Lloyd Kenyon cannot altogether be absolved.

The Westminster scrutiny furnished one of the most fruitful subjects for invective and ridicule to the writers of the Rolliad; and it may easily be imagined that its reputed author did not escape easily. In a dedication to the Master of the Rolls, whose caricature likeness, demi-rampant and holding a roll of parchment, decorates the title-page, his Honour is severely handled. The scurrility of the Rolliad is, however, amply redeemed by its wit and humour.

I quote a few passages: but the whole is too long for insertion here.

[1] Life of Fox, vol. ii. p. 121.

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'*Dedication to Sir Lloyd Kenyon, Bart.; Master of the Rolls, &c. &c.*

'May it please your Honour, it was originally my intention to have dedicated the criticisms on the Rolliad, as the Rolliad itself is dedicated, to the illustrious character from whose hereditary name the Poem derives its title; and as I some time apprised the public, I had actually obtained his permission to lay this little work at his feet. No sooner, however, was he made acquainted with my after-thought of inscribing my book to your Honour, but with the liberality which ever marks a great mind, he wrote to me of his own accord, declaring his compleat acquiescence in the propriety of the alteration. For, if I may take the liberty of transcribing his own ingenious and modest expression, "I am myself," said he, "but a *simple Rolle;* Sir Lloyd Kenyon *is a Master of Rolls.*"

. . . . . .

'I have therefore given directions to my publisher, to exhibit your portrait, with the Rolle Arms and Motto, by way of vignette in the title-page; that displayed, as I trust it will be at the window of every bookseller in Great Britain, it may thus attract the admiration of the most incurious, as they pass along the streets. This solicitude to diffuse the knowledge of your person as widely as your fame, may occasion some little distress to your modesty; yet permit me to hope, Sir Lloyd, that the motive will plead my pardon; and perhaps, even win the approbation of your smile, if you can be supposed to smile without offence to the gravity

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of that nature, which seems from your very birth to have marked you for a judge.

'Behold the engraver's mimic labours trace
The sober image of that sapient face:
See him, in each peculiar charm exact,
Below dilate it, and above contract.
For nature thus, inverting her design,
From vulgar ovals hath distinguished thine.
See him each nicer character supply,
The pert no-meaning puckering round the eye,
The mouth in plaits precise demurely clos'd,
Each ordered feature, and each line compos'd,
Where Wisdom sits a-squat, in starch disguise,
Like dulness couch'd, to catch us by surprise.
And now he spreads around thy pomp of wig,
The owl-like pride of legal honours big:
That wig, which once of curl on curl profuse,
In well-kept buckle stiff, and smugly spruce,
Deck'd the plain pleader; then in nobler taste,
With well-friz'd bush the Attorney-General grac'd;
And widely waving now with ampler flow,
Still with thy titles and thy fame shall grow.
Behold, Sir Lloyd, and while with fond delight
The dear resemblance feasts thy partial sight,
Smile, if thou canst; and, smiling, on this book
Cast the glad omen of one favouring look.'

. . . . . .

'You, Sir Lloyd,' continues the satirist, 'have ever been reputed the immediate author of the scrutiny. Your opinion is said to have been privately consulted on the framing of the return; and your public defence of the High Bailiff's proceeding notoriously furnished Mr. Rolle, and the other friends of the Minister, with all the little argument which they advanced against the objected exigency of the writ. You taught them to reverence that holy thing, the conscience of a returning officer, above all law, precedent, analogy, public expediency, and the popular right of representation, to which our forefathers erroneously paid religious respect,

as to the most sacred franchise of our Constitution. You prevailed on them to manifest an impartiality singularly honourable; and to prefer the sanctity of this single conscience to a round dozen of the most immaculate consciences, chosen in the purest possible manner from their own *pure House of Commons.*

'Thine is the glorious measure; thine alone:
Thee, Father of the Scrutiny, we own.
Ah! without thee, what treasures had we lost,
More worth than twenty Scrutinies would cost!
To instruct the Vestry and convince the House
What Law from Murphy! what plain sense from Rous!
What wit from Mulgrave! from Dundas what truth!
What perfect virtue from the Virtuous Youth!
What deep research from Arden the profound!
What argument from Bearcroft ever sound!
By Muncaster, what generous offers made!
By Hardinge what arithmetic displayed!
And oh! what rhetoric from Mahon, that broke
In printed speeches, which he never spoke!
Ah! without thee what worth, neglected long,
Had wanted still its dearest meed of song!
In vain high-blooded Rolle, unknown to fame,
Had boasted still the honours of his name;
In vain had exercised his noble spleen
On Burke and Fox—the Rolliad had not been.'

. . . . . .

Here follows a long and amusing attack on his Honour, for having voted 'as the delegate of his coach horses;' but I must refer the reader to the original: and at the end is a supposed letter from Sir Lloyd to the High Bailiff, excusing himself from subscribing towards the costs incurred by the latter, on the grounds of his poverty.

'Set your mind therefore at ease,' it concludes, 'as to the money—why, if Pitt is determined to have nothing to do with it, and if nobody else will pay it, I

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think the most advisable thing, in your circumstances, will be to pay it yourself.'

In the discussions which preceded the celebrated impeachment of Warren Hastings, Sir Lloyd Kenyon found himself on more than one occasion opposed to Mr. Burke. The extreme animosity which this extraordinary man had nurtured in his mind against Hastings, though it proceeded originally from a laudable hatred of oppression, yet often carried him beyond the bounds of justice and decorum. Many of those who agreed with him in the main, were unable to justify his temper and indiscretion.

On one of these occasions the Master of the Rolls earnestly deprecated the arbitrary character of the proceedings.

'He contended that it was indispensably requisite that the Committee should proceed with the utmost circumspection, when the whole weight of Parliament was about to be brought forward to press an individual to the ground, whether properly or improperly, he would not say.' 'He urged that the charge should be specified in some sort at least.'

Mr. Burke replied with some temper, and complained of the lawyers coming down at that stage of the proceedings to delay the business. The Master of the Rolls expressed his 'concern and astonishment that the right hon. gentleman should venture without a fair foundation to insinuate, that he and others of his profession had been brought down upon that day, for the purpose of preventing the witnesses from being examined. So far from it, he most solemnly declared that he had not consulted with any individual on the subject, and came

down expecting to have heard the charges intended to be brought in against Mr. Hastings stated by the right hon. gentleman. When the motion was made for calling Captain Jaques to the bar, he cast about in his own mind to discover whether that mode of proceeding was fair and just to the supposed delinquent, and to ask himself how far it approached any sort of process of criminal jurisdiction within his knowledge, because he felt the great magnitude and importance of the business, and was fully convinced that the House could not proceed with too much caution. He quoted Sir Michael Forster's Treatise on the Crown Law, in which, speaking of parliamentary prosecutions, he says it is the duty of the House of Commons to be more peculiarly guarded than any other tribunal because of their extraordinary severity, all the people of England being virtually the prosecutors of one man. In the present case, practices had been resorted to, the most scandalous and unjust. Pamphlets artfully calculated to prejudice those who were to sit in judgment on the impeachment, should any go to the Lords, had been sent under cover to noble lords, with a view to influence their passions and mislead their judgments. In like manner newspapers crammed with articles calculated to answer the same end, had been industriously circulated . . . He hoped and believed none of the accusers of Mr. Hastings either countenanced or encouraged any such practices.'[1]

'It being at length carried without any division that Hastings should be heard in his defence, and that copies of the charges should be granted him, a new

[1] Parl. Hist. vol. xxvi.

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debate arose respecting the mode and order of proceeding. Kenyon strongly maintained that the House ought not to advance another step in the prosecution, till the late Governor-General had been brought before them, while Jenkinson decidedly objected to the reception of evidence. Thus opposed, Burke gave way to all the acrimony and irritation of his character, and let loose upon Kenyon and Jenkinson the utmost efforts of his indignation. "The learned gentleman," exclaimed he, "may repeat his practice of embarrassing the discussion, of varying his opinion, and suggesting different advice according to the circumstances. I will not abandon the cause; I consider one arm as already lopped off. If I lose a leg, I will nevertheless persevere. Even if deprived of both, I will fight like Witherington on my stumps."'[1]

'Throughout the month of May,' continues the same author, 'Burke continued to call witnesses for the purpose of proving various allegations of a criminal nature against Hastings. One and only one debate of considerable interest took place relative to the correspondence carried on between Mr. Middleton, then Minister at Lucknow, and the Governor-General, which epistolary correspondence Burke insisted ought to be produced. With that view he moved that Middleton should be examined at the Bar. But here he was again opposed by the Master of the Rolls. "I can only compare the demand," exclaimed Kenyon, "for the production of private papers from an individual criminally charged, with the avowed intention of criminating him, to the conduct of the Inquisition, where prisoners are

[1] Wraxall, Second Series, p. 105.

put to the torture, in order to extort from them confessions of guilt. Even the act of breaking open Algernon Sydney's private chamber, ransacking his most secret manuscripts, and seizing on an unpublished paper, which subsequently formed the ground of his accusation, and ultimately the pretence for his execution —yet was justifiable when placed in comparison with the present attempt: because in Algernon Sydney's instance danger to the State was pretended: whereas in this case no such pretext can be alleged, but an individual is to be made the instrument of his own conviction. Where then, I ask, is the man to be found who would reflectively do the thing which this House is now called on to authorise?" Burke parried so severe an attack with the arms of wit, rather than of reason or of law.'[1]

Sir Lloyd continued to support Hastings as long as he remained in the House of Commons: and was among those who voted against Pitt on the Benares Charge, when that Minister's conduct caused so much surprise. He also defended his old friend Sir Elijah Impey in the last speech he is recorded as having made in the Lower House.

Mr. Burke took the opportunity of retaliating rather cleverly on his antagonist. 'He had contended,' he said, 'and with success, against the unanimous opinion of the Judges, and should again contend against that determination, if he thought that determination wrong.

'The learned gentleman, he thought, held too high an opinion of the decision of the Judges, and though he might be eagerly looking to become one of that body, he sincerely hoped the learned gentleman might

[1] Wraxall, Second Series, p. 120.

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continue some time longer in his present probationary state, as it were performing quarantine for the benefit of his health and constitution, that when he became elevated to his desired situation, he might carry with him clear and indisputable bills of health to the learned bench.'[1]

The allusion was to the fact, which was now notorious, that Kenyon was intended to succeed Lord Mansfield, who was fast becoming unequal to his position, as Lord Chief Justice of England.

As early as 1786, Lord Mansfield had intimated to Mr. Pitt his desire to be relieved, and had expressed a strong wish that Mr. Justice Buller, who had frequently presided in his absence, might be appointed his successor. To the same effect he wrote to the Lord Chancellor, in the autumn of 1786. 'If I had a favor to ask,' he says, 'I don't know the hand to whose friendly assistance I should sooner apply than to your lordship's. Your lordship very well knows how ably Mr. Justice Buller has supplied my place, and what satisfaction he has given both in the City and in Westminster Hall: if your lordship has the same opinion which I have, there is no need of mine; if your lordship thinks differently, mine can be of no avail.'[2]

Buller was a most able lawyer, dignified in manner, and in every way fitted for the post, but he had incurred some suspicion of partiality in the decision of a recent case concerning the election to a Cornish borough. Sir Lloyd Kenyon, moreover, had some claim on the Government for the assistance he had rendered both in Parliament and in private.[3]

[1] Parl. History, vol. xxvi. pp. 1423–6.

[2] From Mr. Thurlow's Collection.

[3] He had already been made a Baronet, 28th July, 1784.

The Chancellor naturally was anxious for his promotion, and Mr. Pitt, who had a high opinion of his abilities, for once concurred with Lord Thurlow. Kenyon himself, with his usual diffidence, was not at all anxious to be moved from the Rolls. Mr. Pitt and the Chancellor, however, both strongly pressed him to accept, and he eventually give way.[1]

'Breakfast and dinner with the Lord Chancellor, when he talked very much about the place of C. J. of King's Bench, and said he should be under difficulty to find a proper person to recommend, if I persisted in refusing it, and named Eyre or Buller.'[2]

'Mr. Justice Buller dined with us. He expressed his earnest wish that I would take the King's Bench, if he was not to have it, and said that he would rather be under me than any other man. Expressed his dislike of Baron Eyre.'[3]

'Lord Chancellor sent to me, upon his receiving a letter from Lord Mansfield desiring to resign the office of C. J. The Chancellor again proposed to name me to the King, and said the publick looked to me as successor, and that he thought that neither Eyre nor Buller would be approved by people in general.'[4]

'With Mr. Pitt, by his desire, when he pressed me to take the place of C. J. of King's Bench: and insisted I should reconsider the matter. He also consulted me as to the succession to the place of Chief Baron, if it became vacant, and Attorney and Solicitor-General. From him to the Chancellor, on the same subject.[5]

'With Mr. Pitt in the evening, when I promised him to accept.'

[1] Diary, Nov. 22, 1786. [2] Ibid. Nov. 26, 1786. [3] Ibid. Nov. 27.
[4] Ibid. Dec. 2. [5] Ibid. December 2.

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But as soon as it was intimated to Lord Mansfield that Kenyon was intended to succeed him, the old Earl was much vexed, and determined not to give effect to the promotion sooner than he could help. For more than a year he clung tenaciously to his post, hoping that Buller, by his ability meanwhile, would establish an incontrovertible claim to the reversion.

'Lord Mansfield, poor man!' writes General Grant, 'has lived too long, and just exists, impotent, despondding, and in pains: he in a manner resigned some time ago, but not in so explicit a manner as to be considered final, and now he talks of his resignation every day, but does not come to the point, as he expresses great apprehension about the conduct he looks for in his successor, to be Sir Lloyd Kenyon, who without doubt will go to King's Bench, though the world believes that Mr. Pitt has a partiality for Buller.'

'Lord Mansfield,' says the same authority, in April, 1787, 'is at Bath, sleeps everywhere but in bed, receives his quarter's salary, but does not resign. When they were talking of law promotions, Bearcroft said, "Lord Mansfield's carriage stops the way."'[1]

At length, finding he could not prevail, he gave way with a good grace, having presided with consummate ability for thirty-two years in the Court of King's Bench.

Sir Lloyd Kenyon, taking the opportunity to pay him a complimentary visit, was most kindly and cordially received by him, and the old Earl was almost reconciled to the promotion.

[1] Cornwallis Correspondence, vol. i. pp. 269–299.

As soon as the appointment was made known, it was thus criticised in the papers:—

'The resignation of Lord Mansfield, *very much to his honour*, is to be delayed no longer. Sir Lloyd Kenyon of course succeeds; indisputably with more law learning than any man in the Kingdom! and as certainly not more learned than intrepid and honourable. Pepper Arden becomes Master of the Rolls, McDonald the Justice of Chester. Of these appointments, the first, the Chancellor effects; the second, Mr. Pitt; the third, the Marquis of Stafford.'

Sir Lloyd received the degree of the Coif on the 9th of June, and was sworn into office the same day, by the Lord Chancellor. The motto on the rings was, 'Quid leges sine moribus?'

At the same time he was created a Peer by the title of Baron Kenyon, of Gredington, in the county of Flint.

The King, on the occasion of his preferment, was pleased to say to him, 'I am happy to give you the appointment, and wish you may enjoy it as long as your predecessor.'

From a multitude of congratulatory letters, I will only select the following, from one the enjoyment of whose friendship Lord Kenyon always esteemed a high honour:—

From W. Wilberforce to Lord Kenyon.

'5 June, 1788: Rayrigg, near Kendal.

'My dear Lord,—Having just been shaking hands with our friend Pepper[1] on his promotion, in the only

[1] Arden—then made Master of the Rolls.

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way in which one can do it at two hundred miles' distance, allow me to give your lordship the same mark of my friendly remembrance, and to assure you that I receive real pleasure from every event that adds to your honor and happiness. I hope Lady Kenyon and the rest of your lordship's family are well. I thank God, I am gradually gaining ground: I trust my health will be completely re-established by the regularity of a country life during the recess.

'I am, my dear Lord,

'Very sincerely yours,

'W. WILBERFORCE.'

Lord Kenyon was succeeded at the Rolls by Sir R. P. Arden. Macdonald became Attorney-General, and Scott commenced his long official career as Solicitor-General. Arden had been for some time anxious to leave the Bar, and his appointment was very gratifying to him. 'I think,' writes Kenyon, shortly before the changes, 'Pepper feels his station in the profession not comfortable. He expressed his wish to me of being a Puisne Judge.'[1] His wishes had nearly been thwarted by the caprice of the Lord Chancellor, who disliked him, and had a profound contempt for his legal abilities. So angry indeed was he, that after the new Master had kissed the King's hand, he made the appointment the occasion of a desperate quarrel with Mr. Pitt: with whom he had been for some time on indifferent terms.

'Pepper Arden,' writes the Archbishop of Canterbury to Mr. Eden,[2] 'is at last to be Master of the Rolls. It

[1] Dec. 7, 1785.

[2] July 4, 1788.—Auckland Correspondence, vol. ii. p. 217.

was delayed foolishly by the Chancellor, who for two whole sessions together might have said with effect, it should not be, but said no such thing, till he had kissed the King's hand, when it was too late and too absurd to put in his objections. The profession abuses him, saying it was unmanly and ungentlemanlike; he is sulky, and the Minister no less so: in short, there has been, and is, much heart-burning.'

Sir R. Arden, in despair, applies to Lord Kenyon to use his influence with Lord Thurlow:—

Richard Pepper Arden, Esq., to Lord Kenyon.

'1788.

'My dear Lord,—I know not by what fatality it is, but it seems as if it was impossible that anything relating to me should please the Ch^r^. Mr. Pitt told me that on Thursday the Chancellor said that he did not choose to take any part in the appointment, which was therefore to proceed in the usual way, and accordingly a Privy Seal Bill was sent to the Crown Office on Saturday night. As soon as I understood that, I waited upon the Chancellor, and he being out of town, I wrote as respectful a letter as I possibly could, informing him that it would be extremely convenient if notice could be given of the time of petitions, at the same time assuring him that I did not by any means wish that he should put himself to any inconvenience, but that if he would be pleased to honour me w^th^ his commands, so that notice might be given in the office, where persons are perpetually enquiring, he would confer a very particular favour upon me by so doing. To this letter I

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have not been honoured with any answer. Why did the Chancellor ever acquiesce in the appointment? If he had not so done, I should never have thought of it. I felt myself greatly obliged by his acquiescence, but it seems now, after the King's pleasure has been signified as to his acquiescence, which he said as soon as he received he would obey, and after I have been considered by everybody as in possession, I receive fresh mortifications. My friends, as you may imagine, are in astonishment. The thing has gone too far to be undone, and why, therefore, this delay, but for the mere purpose of insult? I am determined to show every attention to him when I am in possession of the office, let his treatment of me be what it may. But I cannot help feeling that his conduct to me is unworthy of him, and I will venture to say, wholly undeserved on my part. May I again entreat your good offices to put things in some train, for at present I profess I do not know what the Ch[r] would have. I am going to dine at the Temple, but will endeavour to call upon you in my way to Highgate.

'Ever yours,

'R. P. ARDEN.'

The Chancellor was of course obliged to acquiesce, but he abated not a jot of his ill-humour with Mr. Pitt. 'Appoint whom you please,' he exclaimed; 'I care not whom the —— you appoint, so you do not appoint one who, instead of lightening my burden, will heave his own d——d wallet upon my shoulders.' 'I look upon my Court and that of the Rolls,' he said elsewhere, 'to be somewhat like a stage-coach, which,

beside the skill of the coachman, requires the assistance of an able postillion to lead the horses and pick out the best parts of the roads. Now if I have got an ignorant furzebush-headed postillion, he may overset the coach and tumble us both into the ditch.'[1] Of a piece with this is the following:—

'Pepper Arden once hazarded some indecorous expressions in Court. The Chancellor frowned: this elicited some kind of apology: "I really, my Lord, forgot where I was." "You thought, sir, perhaps, you were sitting on the Bench of your own Court, administering justice in Wales."'[2]

This transaction was not very creditable to Thurlow, and it is not to be wondered that it was the prelude to further hostilities between him and Mr. Pitt.[3]

[1] Life of Lord Eldon, vol. i. p. 188.

[2] Life of Lord Thurlow, printed for private circulation, 1870.

[3] The following extracts from the Diary are not altogether without interest:—

'1784, *July* 23.—One day this week a bullet came through my study window, and if I had been in the room, I had probably been killed, from the direction the bullet took.

'1785, *May* 25.—To Mr. Pitt's, to talk on Irish business.

'1786, *Jan.* 8.—To London, to try what could be done for Popham about the vacant Mastership in Chancery.

'*March* 24.—I prevailed on the Chancellor to make Popham a Master in Chancery.

'*Feb.* 27.—In the House of Commons this evening, till 7 o'clock in the morning of the 28th, on the question of the Plymouth fortifications—169 V. 169. The Speaker's vote decided against the side I voted on with Mr. Pitt.

'*May* 1.—Very bad account of Lord Chancellor. I went to see him at his desire; found him better, but very ill. I promised him to act as his executor, if he died, which he said gave him the greatest comfort he had received.

'*July* 15.—I have done the business of the Chancellor from the 26th of April to this day inclusive, on account of my very excellent and noble friend's indisposition.

'*Sept.* 12.—Lord Chancellor came to Gredington.

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'*Sept.* 17.—King's message came to the Chancellor from Mr. Pitt, on advices from Paris respecting Dutch affairs.

'*Sept.* 19.—Lord Chancellor left us early this morning for the Marquis of Stafford's, on his way to town, in consequence of yesterday's advices. I fear war is at hand, from the contents of Mr. Pitt's letter, which he showed me.

'*May* 23.—At the Levee. The King expressed great pleasure in his intention that I should succeed Lord Mansfield, and spoke long to me in a most gracious manner.'

CHAPTER VIII.

Lord Kenyon at the King's Bench—The King's Illness—Conduct of Lord Thurlow.

(1788—1789.)

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Sir Lloyd had presided, with great credit to himself, at the Rolls. His merits as an Equity Judge were his rapidity and accuracy. His thorough knowledge of this branch of the law enabled him to decide the cases that came before him without any hesitation or delay. In Lord Eldon's opinion he was one of the quickest judges that ever sat in the Court of Chancery.

On the other hand, he seldom went out of his way to enter into any general exposition of the principles of Equity. His judgments were seldom or never written, and sometimes suffer in consequence from want of arrangement, but they are clear and to the point, and have generally been allowed to be sound and accurate.

While he was Master of the Rolls, Sir Lloyd Kenyon often sat for the Chancellor, and more than once wiped off the arrears in his Court.

Lord Kenyon took his seat for the first time at the Guildhall on the 10th of June, but as the vacation had already commenced, he was not formally installed as Chief Justice till the November following.

The appointment was not at first popular with the profession. Those who knew the new Chief Justice

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intimately, were aware how much kindliness of heart lay beneath the somewhat rough exterior, but the circle of his acquaintance was not very extensive, and his blunt manner had repelled some of his contemporaries, who were fascinated by the genial bearing of his rival, Buller.

It was feared in some quarters that the hastiness of temper, to which I have before alluded, would be fatal to the maintenance of his authority in Court. The King is said to have given him a good-natured warning on this point, and when the Chief Justice assured His Majesty that he intended to keep his temper for the future, to have added pleasantly enough, 'Indeed! my lord, I am sorry to hear that; for you might easily find a better.'[1] Even Erskine good-humouredly carped at the promotion. Somewhat ostentatiously he gave out that he felt it his duty to do all he could for his clients, and if improper judges were made, it was the fault of those who made them. 'Well, Mr. Erskine,' placidly replied the Chief Justice, 'I thank you for your warning, and will take all the care I can, you shall not mislead me.'[2] Outside Westminster Hall the appointment was generally popular. The sterling honesty and inflexibility of character, which even his opponents could not but respect, had made him a great favourite with the people, who felt secure that under his presidency the administration of justice would be free from the slightest taint of corruption or partiality.

[1] This is one of those anecdotes which is variously told of different people, though it has now been pretty generally assigned to Lord Kenyon. Cf. Campbell and Townshend.

[2] From private sources.

I shall have an opportunity, hereafter, of examining how far these various anticipations were realized. I must now advert to the position of affairs, when Lord Kenyon took his seat in the House of Lords. 1788.

The elections of 1784 had established Mr. Pitt's Government in a position of security unprecedented in the reign of George the Third. His industry conciliated the favour of the King, while his magnanimity and integrity commanded the respect of the people. The Coalition had ruined the character of the Whigs. 'Fox,' says Lord Stanhope, 'in his ardour had overshot his mark. He had made it a contest whether the nation should be ruled by the sceptre of George III. or by the tongue of Fox.'[1]

'The conduct of Mr. Fox and the majority of the House of Commons,' says another historian, 'was wanting in dignity and in adherence to the spirit of the Constitution.'[2]

Thus it happened that Pitt's was no ephemeral triumph. Even his errors failed to alienate the support of the country. Allowance was made for his youth and inexperience, and his integrity and disinterestedness were above suspicion. It seemed as if his tenure of office was practically secure for the remainder of the century. The autumn of 1788 dissipated these day-dreams.

The King's health and reason gave way. Early in the month of June His Majesty had complained of symptoms which alarmed the physicians. On their recommendation he went through a course of Chelten-

[1] Stanhope's Life of Pitt, vol. i. p. 180, quoting Dr. Johnson.
[2] Lord Russell's Memoirs of Life of Fox, vol. ii. p. 229.

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ham waters, and returned to Windsor in August, apparently restored.

[1] Two months, however, had hardly elapsed, when his imprudence brought on a return of his complaints. 'The King,' writes one whose connection with the Court renders his testimony most trustworthy, 'rode in the park, came home very wet, when a slight fever first ensued, and soon after the mental derangement.'[2]

Outside the Castle nothing was known of the character of the King's illness for some days.

On the 22nd, Sir George Baker communicated his fears to the Ministry: and the same day, Mr. Grenville, in a letter to his brother, with characteristic caution, alludes to the melancholy truth. The Ministers had especial reasons for wishing to keep the intelligence secret.

'Independently of the King's dislike to its being known that he is ill, we have the strongest reasons of policy, both foreign and domestic, in the present moment particularly, to wish that idea not to prevail.'[3]

With a view of allaying the prevailing alarm, the King was persuaded or allowed to appear at a Levee, which had been appointed for the 24th. His manner and conduct there rendered further concealment impossible, and his symptoms were materially aggravated by the over-exertion. 'The physician,' writes Mr. Grenville, 'now declares that rest and an absolute

[1] October 16.

[2] MSS. Diary of Col. Henry Norton Willis, Comptroller of the Household to the Princess Charlotte, quoted in Jesse's Memoirs, vol. iii. p. 40.

[3] Buckingham Papers, vol. i. p. 429.—Mr. Grenville to the Marquis of Buckingham.

cessation from all business are of indispensable necessity to him.[1]

'We are all,' writes Madame d'Arblay, 'in a most uneasy state. The King is better and worse so frequently, that everything is to be apprehended if his nerves are not some way quieted.'[2]

Meanwhile the public began to be seriously alarmed, and the mystery which prevailed did not serve to allay the general apprehension.

'In the course of the evening of November the fifth, it began to be vaguely whispered among the tenants of the palace, that some fearful catastrophe had occurred in the King's apartments.'[3] The King had been seized with delirium while at dinner with his wife and children.

For many hours his life was despaired of. 'It appears,' says Mr. Grenville, 'that Warren, Heberden, and Sir G. Baker, who are the three physicians who attend him, profess themselves unable to decide whether the disorder is or is not of such a nature as may soon produce a crisis which may lead either to health or death. The other alternative is one to which one cannot look without horror—that of a continuance of the present derangement of his faculties, without any other effect upon his health.'[4]

It was evident that the Ministers could no longer remain inactive. Parliament stood prorogued to the 20th of November, and it was clear that if no change took place in the King's health by that time, they must be prepared with some measure to supply his

[1] Ibid. p. 431. [2] November 3. [3] Jesse's Memoirs, vol. iii. p. 44.
[4] November 7.—Buckingham Papers, vol. i. p. 433.

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place in the Government. Mr. Pitt at once summoned the members of the Cabinet and several of the chief officers of State. Amongst others, Lord Kenyon was frequently consulted both by the Chancellor and Mr. Pitt, and attended the Cabinet Councils throughout the King's illness. The memorable struggle which followed has been so frequently and fully narrated that I shall not further allude to it. There is one episode, however, affecting as it does the character of a man who has been often named in this biography, which perhaps may not unfitly be discussed.

The story of Lord Thurlow's treachery to his colleagues during the King's illness has been generally accepted by recent writers, but apparently without very careful investigation. With the exception of the amusing author of Lord Eldon's biography, who at once emphatically repudiates the story, most of the principal historians have taken upon trust the vague and unsubstantiated assertions of that notoriously inaccurate writer, Sir Nathaniel Wraxall. Round a kernel of fact, has been woven a mass of anecdote and surmise, which, in the pages of Croly, for the first time assumes a tangible shape.

By the kindness of Lord Thurlow's representatives, I have been able to compare this narrative with some of the private papers which are still in their possession, and which, to say the least of it, render the conclusion drawn by Mr. Croly highly improbable.

'Clever anecdote-mongers,' says a modern writer, 'always take care that their anecdotes shall be probable and characteristic. Many a living man has heard stories about himself, some of which are pure inven-

tion, some of which contain a kernel of truth, but which in both cases illustrate, if only by caricature, some real feature in his character.'[1] I might go further and say, that at the present day anecdotes are circulated and believed, which are neither probable nor illustrative; but which are transferred, from the eminent of one generation to their successors, sometimes without even sufficient alteration to make them credible. I have myself heard the same story told of no less than three different people, and I dare say the curious in such matters could tell of more varied experiences than this.

Whether I shall be able to disabuse my readers of their belief in the story of 'Lord Thurlow's hat,' gravely told by several historians, it is not for me to say, but I shall endeavour to elicit the truth, by a fair comparison of the published accounts of this so-called plot with the evidence which I have been able to collect.

Thoroughly to understand the transaction, it will be necessary briefly to review the career and position of Lord Thurlow himself.

He had now been Lord Chancellor since the year 1778, with the exception of the few months during which the Coalition Ministry was in power. In this period, he had held the Seals under no less than four Prime Ministers, viz. Lord North, the Marquis of Rockingham, Lord Shelburne, and Mr. Pitt—men of every shade of political opinion—nor had he therefore been ever accused of treachery or tergiversation. He often declared that he belonged to no party. He was, in fact, one of a number of public men who professed

[1] Historical Essays, by E. A. Freeman, p. 5.

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themselves 'the King's friends,' who studied in the first instance the King's interests and wishes, independently of any party ties.

His position was clearly shown when Lord North retired from office. The Chancellor wrote to Lord Rockingham to intimate the King's desire to see him in office, and it was through the Chancellor that the arrangements were finally made. He remained in office, avowedly to support the King; the support which he gave the Ministry was dependent on the manner in which they acted towards him. This is not the place to discuss the state of things which rendered such a position tenable. Fortunately for the State and for the monarch, such influence could no longer be tolerated for a moment; but the facts should be borne in mind if we are to appreciate fairly Lord Thurlow's conduct in 1788.

On the formation of the Coalition Ministry, Mr. Fox had offered the Seals to Lord Thurlow. His answer, which was characteristic of the man, will help to explain the position which he occupied. 'Mr. Fox,' he replied, 'no man can deny that either you or Mr. Pitt are, beyond any two men that can be named, fit, from character and talents, to be at the head of any administration: but, *as Mr. Pitt is very acceptable to the King*, and is in an extraordinary degree popular in the country, I have connected myself with him.'[1]

The position which Lord Thurlow had held under Lords Rockingham and Shelburne, he recovered when Mr. Pitt formed his government.

It is a matter of notoriety that he disliked Pitt, and

[1] Twiss's Life of Lord Eldon, vol. i. p. 141.

thought himself better qualified to govern than the Minister. He accordingly from the first assumed a very independent line, frequently speaking against Government measures, and occasionally voting against them. His dislike to the impeachment of Warren Hastings still further alienated him from the Minister, and as recently as the session of 1787–8, he had violently opposed his colleagues on the subject of Sir W. Dolben's Slave Regulation Bill.

'The Chancellor,' says Wraxall, 'whose intractability rendered him always difficult to guide, entertained insurmountable objections to the Bill. These objections he was believed to have infused into the King.'[1] His dislike indeed of Pitt savoured of malignity, and sometimes rendered him unjust and harsh to others, as we have already seen in his conduct towards Sir Richard Arden. But his éloignement from the Prime Minister had the effect of drawing him nearer to the Sovereign, to whom he was peculiarly acceptable. Such was briefly the position of Lord Thurlow, when, in 1788, the King's illness supervened. The position of the Opposition has been glanced at above.

They were thoroughly disheartened—the victims of Fox's imprudence and violence. They cherished, moreover, a lively recollection of the mode in which their ejection from office had been effected. In that unconstitutional transaction, Lord Thurlow had been one of the principal actors. Thurlow, they were aware, had the ear of the King. Thurlow, they argued, was a power to be conciliated if a similar catastrophe was to be avoided in future.

[1] Wraxall's Memoirs.

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When the King was first attacked with his malady, toward the end of October, Mr. Fox was on the Continent, and did not return till the 24th of November. The Whig leaders in his absence were Sheridan and Loughborough.

It is generally believed, however, that the person to whose sense of intrigue the negotiation with Lord Thurlow owed its birth, was Mr. J. W. Payne, secretary to the Prince of Wales, a position which gave him the opportunity, which he had not neglected, of access to the Prince's ear.[1] The scheme is darkly shadowed out in a letter to Sheridan. The secretary there expresses his opinion 'that the Chancellor might take a good opportunity to break with his colleagues, if they proposed restriction.'[2]

In another letter he adds, 'I inclose you the copy of a letter the Prince has just written to the Chancellor, and sent by express, which will give you the outline of the conversation with the Prince as well as the situation of the King's health. I think it an advisable measure, as it is a sword that cuts both ways without being unfit to be shown to whom he pleases, but which I think he will understand best himself.'[3]

This petty intriguing must have received a severe blow thus early in its infancy; for on the 7th of November, with the full consent of his colleagues, Lord Thurlow went to Windsor and there had a long interview with the Prince. The scandal-mongers must have been delighted. The results of the interview, however, are thus referred to in Lord Kenyon's diary:

[1] Campbell's Lives of the Chancellors, vol. viii. p. 83.
[2] Moore's Life of Sheridan, vol. ii. p. 22.
[3] Ibid. vol. ii. pp. 27, 31, 32.

'Nov. 7.—I dined with the Lord Chancellor, who was just come from the Prince of Wales, *who had sent for him to Windsor*, on account of the King's alarming state of mind. I had much conversation with the Chancellor as to what was to be done if the illness continued, about Regency, &c.' CHAP. VIII. 1788.

Lord Thurlow's advice to the Prince was temperate and judicious—he recommended him to lie upon his oars, and to show no impatience to assume the powers of royalty. He pointed out to him that if the King's illness was of any considerable duration, the Regency must devolve upon him.[1] Thus far there was no treachery. Mr. Pitt himself could not have given sounder or more constitutional advice. It was the violence of the Whigs, and the indecent haste of the heir-apparent to grasp his father's sceptre, that suggested the necessity of imposing any restrictions. It must be remembered, too, that when Thurlow gave his advice, no plan of Regency had even been discussed, much less decided upon by the Ministry. The result of his interview with the Prince was at once communicated by the Chancellor to Mr. Pitt, as is evident from the following extract from a letter from Mr. Grenville to his brother:

'We have no grounds on which to judge of our own situation, except from such conjectures as you are equally able to form on the grounds of the Prince's former conduct and language. He sent yesterday for Thurlow to Windsor, and about half-an-hour ago Pitt received a note from the Chancellor, who is returned

[1] Nicholls' Recollections, p. 72, strangely perverted by Lord Campbell.

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to town, saying that the Prince had commanded him to desire Pitt's attendance at Windsor to-morrow morning at eleven. *Pitt is gone to call on the Chancellor to learn the nature of his conversation of yesterday.* We understood that the object of his going down yesterday was only that he might be consulted as to the steps that might safely be taken with the King in his present unhappy situation. The message of to-day looks like something more, though it seems *too early for any negotiation*, even if other considerations made that probable.'[1] This seems at once to dispose of the allegation that the Chancellor concealed his interviews with the Prince from his colleagues. It establishes, too, the fact that the Cabinet was in expectation of some communication from the Whigs. It was probable that the dismissal of Pitt would occasion a great clamour in the country. Would it be impossible to effect a junction with him on terms which would practically annihilate his power? Would he be impenetrable to all advances? The Prince's advisers thought not. The day following Thurlow's visit to the Prince of Wales, Mr. Secretary Payne discloses his scheme to Lord Loughborough:—

Mr. J. W. Payne to Lord Loughborough.

'Nov. 9th and 10th: 12 o'clock at night.

'My dear Lord,—

. . . . . .

'I took the liberty of mentioning to the Prince the very liberal accommodation of your conduct in pro-

[1] Mr. Grenville to Marquis of Buckingham, November 7, 1788.—Buck. Papers, vol. i. p. 435.

motion of his service. He said, 'Well, if the C. chooses to remain where he is, Lord L. can have the Privy Seal or President for the present, and settle the other arrangement afterwards, if it is more to his mind.'[1]

Already some of the principals began to hang back. Sheridan was alarmed at Payne's officiousness; and Lord Loughborough trembled at the prospect of the Great Seal being offered to Thurlow.

Mr. Sheridan to Lord Loughborough.

'Wednesday morning, Nov. 12th.

'My dear Lord,—Everything remained late last night at Windsor without the least amendment, and in consequence of a consultation of the physicians, they are, I believe, ready to give a decided opinion. The Prince sends Payne to town this morning: I shall make an attempt at setting his head a little to rights, if possible, for he is growing worse and worse; but a few words from your lordship will have more weight. Among other things, he tells me he has suggested to the Prince to write directly to the Chancellor, and he tells me that the letter shall be so worded that either he or I may deliver it, so that I suppose his notion is to bring this negotiation into the same train and footing as Lord Sandwich's. It is really intolerable, and I mean to speak very plainly to him.

. . . . . .

'I have the honour to be, &c. &c.

'R. B. SHERIDAN.'[2]

[1] Lord Campbell's Lives of the Chancellors, vol. viii. p. 85.

[2] Ibid. vol. viii. p. 87.

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Meanwhile Mr. Pitt had been closeted with the Prince. 'Pitt,' writes Mr. Grenville, on the 9th, 'came back last night. The Prince had a long consultation with him relating to the King's situation, but nothing from which he could collect what he thought of doing in the two cases that may arise. The general notion is that he will try to negotiate with Pitt, from the fear of his popularity, but I do not think it probable. He treated Pitt with civility, but nothing more.'

'The Chancellor,' records Lord Kenyon on the 9th, 'sent for me again this day, to consult about the public affairs—he having just had a letter from Dr. Warren. *Delirium sine febre.* Inspected Parliament Rolls on the accession of Henry VI.'

On the 13th, a Cabinet Council was held, and the gloomy prospect discussed. Some intimation was given by Mr. Pitt of his ideas respecting the Regency, but he did not enlighten his colleagues as to the course he intended to pursue; in all probability he had himself arrived at no decision. The Ministers had to contemplate the prospect, not only of the continued derangement of the Sovereign, but also that of his immediate demise, by many then thought the most probable event. In either case, would a junction with their opponents be wise, just, or practicable? That these questions occupied the attention of Pitt himself, will appear from the following letter:

Mr. Grenville to the Marquis of Buckingham.

(Extract.)

'Whitehall, Nov. 13th, 1788.

'If the present circumstances should still continue, Pitt means to propose a Bill declaring the Prince of

Wales Regent, or Guardian, to exercise the King's authority during his illness, but in the King's name only. We have not, I think, yet entirely made up our minds as to the degree of power and authority which it will be right to put into his hands for that purpose. We have no knowledge at all, any more than when I wrote to you before, of the Prince of Wales's intentions, nor has any overture, direct or indirect, been made to Mr. Pitt. The difficulties of a real bonâ fide junction appear insuperable, and in anything short of that, duplicity and dishonesty might give them advantages which, though we should not certainly envy, yet we might have much cause to lament. In the case of a demise, which there is to-day more reason to think probable than there has been for several days past, we shall feel ourselves considerably embarrassed.'[1]

Such remained the position of affairs till Fox returned. It would seem that the Whig leaders hesitated to proceed further without his sanction. Lord Campbell insinuates that further negotiations were carried on, but concealed from Fox; but I can find no authority for the assertion, which seems to be contradicted by what follows.

Thurlow had another interview with the Prince on the 15th. 'With the Chancellor,' says Lord Kenyon, 'who had been yesterday at Windsor by the Prince's desire, and had much conversation with the Prince. With Mr. Pitt by his desire, to converse on the state of public affairs.'[2]

On the 25th, both the Chancellor and Mr. Pitt were

[1] Buckingham Papers, vol. i. p. 451 *et seq.*

[2] Diary, November 16.

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at Windsor, and on the Chancellor's return to London, 'he at once called on the Prime Minister in Downing Street, where Mr. Rose was with Pitt.' [1]

The same day Lord Bulkeley, writing to the Duke of Buckingham, comments on the position of the Cabinet.

'I supped at White's the night before I left town, where Pitt was in high spirits. . . . I heard for certain that the Chancellor, who was suspected of being rattically inclined, was firm as a rock, and that the whole Cabinet were determined to die together.' [2]

A little attention to dates here will aid us in unravelling the mystery. Fox, it will be observed, did not return till the 24th, on which day Lord Bulkeley was assured of the Chancellor's integrity. Yet it is evident, from Mr. Fox's letters to Sheridan and Lord Loughborough, which I shall presently insert, that on the 29th instant no definite proposal had been made to Thurlow, for Lord Loughborough's consent had not been obtained.

After Lord Bulkeley had assured himself of Thurlow's integrity, but before any definite proposal had been made to the Chancellor by Mr. Fox, the following startling events are recorded by Mr. Rose, and as they form almost the only real evidence upon which this accusation has been made, I shall insert the passage entire:

'On the 26th, at night, or rather at 1.30. a.m. of the 27th' (this was the day following the visit of Mr. Pitt and the Chancellor to Windsor before referred to), 'Mr. Pitt was waked with a letter from the Chancellor, summoning the Cabinet to meet at Windsor, by com-

[1] Rose's Diaries, vol. i. pp. 86, 87 *et seq.*

[2] Buckingham Papers; November 25, vol. ii. p. 15.

mand of the Prince, on that day, the 26th. The servant, who ought to have carried the letter at nine in the evening, neglected it; and the one who came with it at the before-mentioned late hour, being asked whether the Chancellor was then up, replied, Yes, and that Mr. Fox was with him—a fact which his lordship had not noticed.[1] The next day, when the Cabinet met at Windsor, the members were long in deliberation. Previous to their meeting, the Chancellor had been with the Prince of Wales, and when all the rest of the confidential servants of the Crown went to Salt Hill to dinner, his lordship returned to the Prince's apartments, where he had refreshments provided for him, the Prince sitting with him. Most of the Cabinet slept at Salt Hill. Mr. Pitt returned to town late on the 29th. He did not dine with the Master of the Rolls, but was at a Cabinet again at Lord Carmarthen's office at eight in the evening. In the course of that meeting, many inquiries were made by the Lords as to whether any one knew if Mr. Fox had seen the Prince of Wales, or held any communication with him; or if any one present knew anything about him—of all which the Chancellor, amongst others, professed perfect ignorance. He even asked if anybody knew the colour of Mr. Fox's chaise, in order to form a guess from them whether it had been seen on the road to Windsor. Mr. Pitt desired to ascertain the opinions of the members of the Cabinet respecting the propriety or expediency of joining the Opposition, if it should be in their choice,

[1] The improbability of this story appears from Mr. Rose's own statement just before, that on his return to London on the 25th Lord Thurlow at once called on Mr. Pitt in Downing Street.

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under any circumstances whatever. He put the question directly to the Lord Chancellor, who said he considered it an abstract question, and could not answer it distinctly. Mr. Pitt said it was a plain question—Would his lordship join with the opposite party under any circumstances; to which he would give no answer. Other members, by their silence more than anything else, left an impression on Mr. Pitt's mind that they were impressed with an idea that a junction of some sort might be expedient for the country; but his own determination was fixed beyond all possibility of being shaken,—not to entertain the idea of a junction at all.'

From this wonderfully circumstantial account, these facts may be gathered:

First—That Thurlow had an interview with Fox, the purport of which he did not communicate to his colleagues.

Secondly—That many of the members of the Cabinet, the Chancellor probably included, were half prepared to accept some terms of accommodation with the Whigs, if the choice was given them; and

Thirdly—That Pitt himself had considered the advisability of such a course of action.

What is to prevent our accepting the natural conclusion: That the object of Thurlow's interview with Fox was to ascertain on what terms a junction of parties might be effected; and how far there was a possibility of an agreement being arrived at on the subject of the Regency? The advantage of such an agreement to the public service must have been obvious. If the Whigs had followed Thurlow's advice to the Prince, and committed themselves to no violent policy; if, in

fact, they had been able to resist the influence of Lord Loughborough, whose interests were plainly adverse to a coalition, it is quite conceivable that the great battle of the Regency might never have been fought.

Thurlow was in many ways the best man to negotiate such a coalition. He was on friendly terms with Fox; and in 1778 and 1782, he had actually attempted some such a fusion of parties. The treachery of such an attempt would depend entirely on the nature of the terms which might be considered. There is no evidence at all that there was any intention on his part to throw over his colleagues, and obtain a bargain solely for his own advantage. In these days, no doubt, we should not dream of a Lord Chancellor taking the lead out of the Prime Minister's hand in such a matter; but in the last century, this seems to have been done not only frequently, but as a matter of course.

In the Rockingham papers we find Thurlow entrusted by the King with the commission to strengthen Lord North's Ministry, by gaining the adhesion of some of the Opposition, and throughout the reign, attempts at coalitions of parties were frequently made by individuals unauthorised by the Prime Ministers of the day. If this view of the question be correct, much that follows will chime in as a matter of course.

It will be necessary, however, first to insert the remainder of the correspondence which bears upon the subject. This shows clearly enough the wishes of Fox and Lord Loughborough, and indicates the point of divergence between them and the more thoroughgoing of their party.

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Right Hon. C. J. Fox to R. B. Sheridan

'Dear Sheridan,—I have swallowed the pill—a most bitter one it was—and have written to Lord Loughborough, whose answer of course must be *Consent.* What is to be done next? Should the Prince himself, you, or I, or Warren be the person to speak to the Chancellor?[1] The objection to the last is, that he must probably wait for an opportunity, and that no time is to be lost. Pray tell me what is to be done? *I am convinced after all that the negotiation will not succeed,* and am not sure that I am sorry for it. I do not remember ever feeling so uneasy about any political thing I ever did in my life.'[2]

Right Hon. C. J. Fox to Lord Loughborough.

'St. James's Street, Saturday Morning.

'My dear Lord,—I am so perfectly ashamed of the letter I am writing, that I scarcely know how to begin; but my knowledge of your way of thinking, and the perfect and unreserved freedom with which we have always conversed together, gives me some courage, and induces me, without any further preface, to state to you the difficulties under which I feel myself.

'When I first came over, I found a very general anxiety among all our friends, and in the Prince still more than others, to have the Chancellor make a part of our new administration, and (excepting only the D. of Portland), they all seemed to carry their wishes

[1] It is evident from this letter that *up to this time* no definite offer had been made to Thurlow.

[2] Lord Campbell's Lives of the Chancellors, vol. vii. p. 248.

so far as to think his friendship worth buying, even at the expense of the Great Seal. This idea seemed so strange to me, considering the obligations we are all under to you, and so unpleasant to those feelings of personal friendship, which I am sure you do not consider as mere professions from me to you, that I took all sorts of means to discourage it, and *have actually prevented the Prince, though with some difficulty, from saying anything to Thurlow, which might commit him;* and, to prevent the possibility of it, I obtained from him the message which I delivered to you, Wednesday night, from his Royal Highness. The difficulties which have arisen within these few days, and which to many seem increasing, have had the effect of increasing the anxiety of our friends for Thurlow's support; and they seem all to be persuaded that the Great Seal would gain him, and nothing else. You know enough of the nature of our party to know how rapidly notions are sometimes propagated among them, and how very difficult it often is for us, who ought to lead, not to be led by them. Under these circumstances, I must own (and I am certain you will approve my freedom in owning it, whatever you may think of my weakness), that I wish to have it in my power to offer Lord Thurlow the Great Seal, not from my own opinion of the advantages likely to accrue from such an offer, but from the dread I have, if things turn out ill, of having the miscarriage imputed to my obstinacy. The invidious point of view in which you would stand yourself in such an event, rather adds to my anxiety; for although they all know the handsome offers you have made, and

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therefore that the whole blame ought justly to lie on me alone who refused them, yet it is not pleasant to be looked upon as a person whose pretensions, however just, have stood in the way of the success of a party. I have related to you most freely the difficulties of my situation, and I should really take it ill if you answered me but with the most unreserved freedom. If you can call here, it would be best; but if you cannot, pray let me have a line, though I know your answer; and the more certain I am of it, the more I feel ashamed of this letter. I really feel myself unhinged to a great degree, and till I see you, which I hope will be soon, or hear from you, shall feel very unpleasantly. I feel the part I am acting to be contrary to every principle of conduct I ever laid down for myself, and that I can bring myself to act it at all, I strongly suspect to be more owing to my weakness than my judgment.

'I am, with the sincerest friendship,

'My dear Lord, yours ever,

'C J. Fox.'[1]

The following is the answer:

'Guildhall.

'My dear Sir,—I will frankly confess to you that the measure appears to me a strong indication of weakness, and I am deceived if it will not be generally so felt as soon as it is known. This affords additional reason why, even on motives of prudence, I should acquiesce in it, which I do, I assure you, without the smallest interruption of those sentiments of friendship and con-

[1] Lord Campbell's Lives of the Chancellors, vol. viii. p. 93.

fidence, with respect to you or the D. of Portland, which will ever remain in my heart. CHAP. VIII. 1788.

'I ever am, my dear Sir, yours,

'LOUGHBOROUGH.'[1]

Lord Loughborough's own feelings are more clearly shown in his letter to Sheridan:—

Lord Loughborough to R. B. Sheridan.

'My dear S.—I was afraid to continue the conversation on the circumstance of the inspection committed to the Chancellor, lest the reflections that arose upon it might have made too strong an impression on some of our neighbours last night. It does indeed appear to me full of mischief, and of that sort most likely to affect the apprehensions of our friends (Lord John, for instance), and to increase their reluctance to take any active part.

'The Chancellor's object evidently is to make his way by himself, and he has managed hitherto as one very well practised in that game. His conversations both with you and Mr. Fox were encouraging, but at the same time *checked all explanations on his part, under a pretence of delicacy towards his colleagues.* When he let them go to Salt Hill, and continued to dine at Windsor, he certainly took a step that most men would have felt not very delicate in its appearance, and unless there was some private understanding between him and them, not altogether fair, especially if you add to it the sort of conversation he held with regard to them. I cannot help thinking that the difficulties of managing the patient have been invented or improved to lead to

[1] Lord Campbell's Lives of the Lord Chancellors, vol. viii. p. 94.

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the proposal of his inspection (without the Prince being conscious of it), for by that situation he gains an easy and frequent access to him, and an opportunity of possessing the confidence of the Queen. I believe this the most from the account of the tenderness he showed at his first interview, for I am sure it is not his character to feel any. . . . . With a little instruction from Lord Hawkesbury, the sort of management that was carried on by means of the Princess Dowager in the early part of the reign may easily be practised. In short, I think he will try to find the key of the back stairs—and with that in his pocket, take any situation that preserves his access, and enables him to hold a line between different parties. In the present moment, however, he has taken a position that puts the command of the House of Lords in his hands.' [1]

The nature of the compromise that it was imagined might conciliate both parties may be gathered from the following correspondence, which I am enabled to print by the kindness of Lord Thurlow's descendants. The first letter gives Lord Loughborough's ideas, and the second Lord Thurlow's views on the subject:—

Lord Loughborough to Lord Thurlow.

'Friday Evening.

'My Lord,—I have taken a strong fancy, from some parts of our conversation yesterday, that you conceive it to be possible to find better means for avoiding the evils of the present moment than the provisions of any given bill. On the supposition of a certain but slow recovery, would it not be the most natural course to

[1] Lord Campbell's Lives of the Lord Chancellors, vol. vii. p. 249.

commit to the P., during the progress of recovery, in the name and by the authority of the K., the powers of administration, with no other restriction than honest advice should suggest, and honourable arrangements secure? Could that fail to be the mode adopted were the Royal Family united, as it ought to be; and, to accomplish both objects, is it impossible to establish a confidence between those who fairly mean the public good? On the contrary supposition, that a recovery is not certain, the conclusion would not much vary: in my mind, it would not vary in any respect.

'If my wish has not misled my judgment in the conjecture I formed of your ideas, I should be very glad of an opportunity of conversing with you, upon the terms that nothing of the conversation shall be remembered but by mutual consent. If my ideas strike you as absurd, throw my letter on the fire, without taking the trouble of answering it. I am at your orders at any time: except that from ten to two to-morrow I must be at Guildhall. I have a message to you from H.R.H., in consequence of my repeating to him the manner in which you spoke of his conduct at Windsor: but that being a mere return of polite attention, I would not make use of it as a means of introducing a more serious conversation. You will be so good as to suppose that I have related to you the grateful sense he has of your approbation of his conduct, in case I should not have the honour of seeing you before Tuesday. I am, with great regard,

'Your lordship's most obedient

'And most humble servant,

'LOUGHBOROUGH.'

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Lord Thurlow to Lord Loughborough.

'My dear Lord,—They say doctors and lawyers should never trust their own opinions . . . Suppose a clause like that in 33 H. 8, c. 21: And be it declared and enacted by the authority aforesaid, that his Majesty's Commission bearing date ——, passed under his Great Seal by the advice and assent of both Houses of Parliament, and also his Majesty's Commissions, which may or shall pass under his Great Seal, for giving his Majesty's royal assent to this Act, with the like advice and assent of both Houses of Parliament, shall be and be held legal, to all intents, constructions, and purposes, and shall be as valid and effectual to pass this Act, as if his Majesty could be present in Parliament in his royal person: His Majesty's indisposition, or any other matter or thing, to the contrary notwithstanding. This avoids saying that he did not sign any warrant for those purposes. . . . .'

'The more I revolve on the subject of our last night's deliberation, the more I am fixed in my opinion that the power of the Crown must settle, in some way or other, on the Prince. . . .

'The only aim which seems fair, is to shape this authority so as to take away those alarms which malice may try to excite, that the prospect of the King's resuming the reins of Government on the return of his capacity, is less certain, in appearance at least, than it ought to be.

'An address to the Prince to take on him the Regency properly qualified, and in that character to hold the Parliament: after which an Act may pass to make such holding, and all done under it, legal, during the Kg's

distemper, and until he shall himself treat with Parliament from the throne. In the meantime writs will run, and all other acts of Government pass in his name.

'A resolution that no question shall arise on the capacity of the King to signify his pleasure for appointing a Regent (*custos*) to hold a Parliament in the King's name, after which an Act must pass to declare the *custos* competent to act, notwithstanding the King's presence, till he shall treat with his Parliament in person.' [1]

At this point the negotiation, whatever was its nature, appears to have been broken off. Fox had given in his adhesion to it with reluctance, and was no doubt glad to find his hands free.

Party interests and party necessities prevailed, as they have done before and since, over compromise and good sense.

The Whigs committed themselves to the theory that the Regency had descended to the Prince of Wales by hereditary right, and the Tories shewed their distrust of their prospective sovereign by imposing a series of restrictions upon his tenure of the Regency.

Lord Thurlow probably liked Pitt's policy as little as that of the Opposition: in fact, it is evident from the letters which I have quoted that he thought that the Prince was entitled to exercise the power of the Crown by a moral if not by a strictly legal right. Moreover, his dislike of Pitt rendered his position very uncomfortable. Efforts were repeatedly made by Lord Kenyon and by the Marquis of Stafford to reconcile the two Chancellors, but with only partial success.

[1] This Memorandum, by Lord Thurlow, is not dated.

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Meanwhile Parliament met after the adjournment, and whatever doubts may have existed as to the Chancellor's conduct were speedily dispelled. He at once repudiated Lord Loughborough's assertion that the Prince had any legal right to the Regency. 'If,' said he, 'the Prince of Wales possessed this undoubted right, then the deliberations in Parliament were useless and nugatory.' 'He professed he was of a different way of thinking. He did not mean to assert that they were to make a mere election business of it, but they certainly possessed an incontrovertible privilege to *advise* what ought to be done.'

It seems unnecessary to pursue the narrative, for it is clear that before this date, December the 11th, whatever may have been his previous conduct, his resolution was finally taken to support Pitt. 'It is clear,' writes Mr. Grenville on the 7th, 'that whatever object Thurlow might at one time have had in view, he has now taken his determination of abiding by the present Government and supporting their measures with respect to the Regency.'

Again on the 9th he writes: 'There is no longer any doubt of Thurlow;' and on the 11th Lord Bulkeley writes, 'The Chancellor opened out enough of his sentiments to show that he means to stand by his colleagues. His speech was not long, but one of the finest I ever heard, and made so strong an impression that we gave him a merry "Hear! hear!"' [1]

Mr. Grenville's letter was written, it will be observed, nearly a week before Thurlow's second and more celebrated speech. It is clearly impossible, therefore, that,

[1] Buckingham Papers, vol. ii. p. 52. Cf. also pp. 59, 62 *et seq.*

as has been asserted, Pitt came down to the House on that occasion fully prepared to witness his desertion of his colours.[1]

The Whigs appear to have given up all hopes very reluctantly. It was not till the 26th that Lord Loughborough received the following:—

The Right Hon. C. J. Fox to Lord Loughborough.

'St. James's Street, Dec. 26th.

'My dear Lord,—I could not collect from the conversation yesterday much of what is like to be the course of Thurlow's argument. He seemed to think it a more confused and difficult case then it has ever appeared to me; and therefore, if I were to guess at all, I should suspect that he will choose rather to answer the arguments of others than produce many of his own. My general conclusion from this part of our conversation, as well as that relative to restrictions, was, that he had thought less upon the subject than I should have supposed possible. The negotiation is off, with an express desire on his part that no more may be said to him on the subject till the Regency is settled, and *advice* to the Prince to make his arrangements without any view to him. It was much the pleasantest conversation I have had with him for many years. Upon the business of our interview, he was perfectly open and explicit, and dismissed the subject as soon as possible with perfect good-humour, in order to talk upon general ones in our old manner of conversing.

[1] The author of the Life of Lord Thurlow in the Law Magazine says that Wilkes' remark, on hearing Thurlow's celebrated peroration, was made in a private company, not on the steps of the throne.—Law Magazine, vol. vii. p. 75.

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'He was in a talkative humour: and France, Spain, Hastings, Demosthenes and Cicero, were all talked over, as if between two friends who had neither political connection nor enmity. In short, I think the negotiation is fairly at an end; and if, when the Regency is settled, the Prince wishes to revive it, it must be considered as a proposition entirely new, and treated upon that footing.

'I am, my dear Lord, yours ever,

'C. J. Fox.' [1]

That which must chiefly strike an impartial judge on reviewing the foregoing narrative is the vagueness of the so-called conspiracy. There is no evidence to prove the character of the negotiation; the date when it commenced and when it ended is differently stated by different writers; and with whatever hesitation, it is notorious that all advances were eventually repelled. On so slender a basis it must have been difficult to build up a substantial accusation. My own view as to the transaction will be gathered from what has been said. We have seen how general was the opinion that some overtures towards a coalition would be made by the Whigs: we have seen, also, that some members at any rate of the Cabinet were not altogether unprepared to entertain such overtures.

Is it not then most probable that Fox's proposals to Thurlow were made to bring about such a concordance upon the subject of the Regency as would render a coalition possible? It must be remembered that the great object of the Opposition was to coalesce with *Pitt*.

[1] Lord Campbell's Lives of the Lord Chancellors, vol. vi. p. 206.

It was Pitt's popularity that they feared. Their object would not have been obtained by merely detaching the Chancellor. Nor would there have been anything extraordinary in such a combination. Such a coalition had been proposed in 1784, and was actually effected to some extent in 1796.

This supposition explains many difficulties. It explains Thurlow's hesitation. He had to consider whether the junction would be palatable to his colleagues, and the position they would occupy in the event of the King's recovery. It explains, too, his ill humour with Pitt, if the Minister, as seems from Mr. Rose's statement, was the main obstacle in his path. However right Pitt may have been in refusing all overtures, until the Regency was settled, it is by no means so clear that he would have been justified in doing so, when the Prince was finally installed Regent, or in the event of the King's death.

The very question put to Thurlow by Pitt seems to favour this supposition. 'Were there any circumstances under which his lordship would join with the opposite party?' And Fox's last letter hints at the same eventuality: 'No more is to be said till after the Regency is settled.' On the whole, this appears the most probable construction to put upon a story which has hitherto tarnished the fame of a great man without fair consideration.

In conclusion it may be asked, is there anything in Thurlow's character or previous conduct, which favours a contrary decision? As Nicholls says, 'Trimming was not congenial to his character.' Whatever were his faults, they were not those of a cunning or deceitful nature. He was too apt to affront, because

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he disdained to conceal his sentiments. He could not profess to admire a policy which he disapproved: he could not be civil and courteous to a man whom he disliked. Intolerant, overbearing, even malignant in his dislikes he was; but mean and treacherous never, if the opinions of those who knew him best are to be believed. Finally, there is the strong evidence in his favour of contemporary opinion. It is true, that Mr. Grenville passes a qualified censure on his conduct, that Mr. Rose, who from personal reasons disliked him, vaguely insinuates treachery, and that Wraxall triumphantly relates the story of the Hat. But Nicholls decidedly repudiates the accusation. 'I know,' says he, 'the Chancellor has been much abused for his conduct on this occasion: some members of the Opposition have gone so far as to say that he would have acted against the opinion of Mr. Pitt, if the Opposition would have engaged to continue him in the office of Chancellor: but I do not believe the assertion to be true. I believe that Lord Thurlow acted with great integrity: he once told me that if it had been ultimately necessary to pass the Regency Bill framed by Mr. Pitt, he should have acceded to it with great reluctance.'[1]

Lord Eldon asserts his entire disbelief of the supposed plot, and Lord Kenyon, who was constantly with Thurlow throughout the transaction, has left on record his belief that the charge was entirely got up by the Whigs.

Lady Kenyon, writing to her sister early in 1789, thus comments on the reports then prevalent:—

[1] Recollections and Reflections, Personal and Political, by John Nicholls. Lond. 1820, p. 72.

'January 17th, 1789.

'It is so certain now where the power will be lodged, that many will go over daily. The rats, as they are called, are all on the watch. *Everybody speaks highly of the Chancellor on all sides:* the Opposition say Mr. Pitt has been personally uncivil to the Prince. I do not believe it. That party have done all they can to throw blame on him, and in this examination of doctors on the Queen; though last night the leaders of their party thought it prudent to say everything fine of her. . . *They have coaxed and courted the Chancellor every way and by every person, but he will not join them.*'

The Prince of Wales himself bears unwilling witness to the integrity of the Chancellor's character. In a memorial, said to be drawn up by Sir Gilbert Elliott, afterwards Earl of Minto, which was presented to the King after his recovery, on behalf of the Prince, the following passage occurs:—

'It is with satisfaction I inform your Majesty that we desired and received the advice of the Lord Chancellor on every material step we took. I reflected on the great personal confidence with which your Majesty had distinguished Lord Thurlow, and the nature as well as eminence of his office seemed to point him out as a person who might be consulted with peculiar propriety in this most critical and delicate posture of affairs.'

A more unwilling witness still must have been the Prime Minister himself, if, as Mr. Grenville says, he was induced to dissemble his knowledge of Thurlow's conduct from his regard to the King.

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On the 7th of February, alluding to reports that were current, the Chancellor of the Exchequer said 'he hoped so unfortunate a circumstance as the country's being in danger of being deprived of the assistance of so able a Minister was not likely to happen: certain he was a fit successor could not easily be found. . . . . It was an event, he was persuaded, which would be seriously lamented by the country.' . . . 'He knew it would be difficult *to find a man of the upright conduct and manly integrity of the Lord Chancellor.*'[1]

The public opinion of the day was in favour of the Chancellor to an exaggerated degree. In a cynical publication, written in 1792, which comments with no especial partiality on the merits of the various lawyers of celebrity, Lord Thurlow is thus dealt with:—

> 'Tetrum ante omnia vultum,
> Monstrum horrendum, informe, ingens.

'There is not a man in England, of any party, size of understanding, or political complexion, whose business, views, or movements have led him to speculations of this kind, that is not firmly persuaded and satisfactorily informed of the steadiness, uniformity, and inflexibility of the overruling principle that directs his conduct. Though earth, hell, and heaven were to club their influence and unite in threatening him with worldly disgrace, future punishment, and eternal reprobation, they must carry their threats into actual execution before they could intimidate him from pursuing the great principle of his nature. He is not an example of mean insinuation, but stands, says an elegant diurnal

[1] An Impartial Report of all the Proceedings in Parliament on the late Important Subject of a Regency. London, 1789, pp. 511, 512.

writer, amidst the warring factions of the times like the Chan of the Usbecs, too formidable to be visited with contumely, though too savage to create esteem. His enemies, who hate him with rancour rather than enmity, dare not question his integrity, nor can they charge him with any action deserving reproach.' [1]

Lastly, the King and Queen always considered themselves as principally indebted to Lord Thurlow for the maintenance of their interests during the King's illness. The Queen's letters, especially, show an amount of trust in the Lord Chancellor which it is difficult to believe misplaced.

We find, then, that the story is inconsistently told, that there are material discrepancies in the versions of its different authors, that it contradicts the generally received opinion of Lord Thurlow's character, and that it was disbelieved by those of his contemporaries who were the most likely to be able to form an accurate judgment. On such evidence no impartial jury would for a moment convict. The character of our public men is too precious a heritage to be trifled away by gossiping stories and vague reports: the verdict of a discerning and impartial posterity should be founded on the laws of truth and justice, and borne out by undeniable facts: and any conclusion which implicates the honour and integrity of a great public man, should be arrived at with hesitation and a real reluctance.

The following letters, which contain the judgment of

[1] Strictures on the Lives and Characters of the Most Eminent Lawyers of the Present Day. Dublin, 1790.

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an eminent man on this episode, will, I believe, be read with interest:—

From Lord Holland to George Lord Kenyon.[1]

'My dear Lord,—I have just got and looked at Mr. Croly's book, and my uncle's letter in p. 191. I never recollect having seen it before.

'Unquestionably it does not substantiate the charge of treachery or of being "hired" against L^d^ Thurlow. Nor does it the least justify the coarse or disgusting language of the author, or, I must take leave to add, of Mr. Burke, about him. Where, after all, would have been the blame of acting and uniting with men with whom he had differed or quarrelled on other points, when he agreed and had been reconciled with them on those immediately before him? The letter tallies pretty nearly with my recollection, or, I should rather say, impression of the transaction. It proves, I think, distinctly, that there were hopes among the Prince's friends, and, as I believe, in the Prince himself, of L^d^ Thurlow's accession, and it almost proves that Thurlow had, more or less, listened to some overtures, or had, as the phrase is, coquetted a little, though not distinctly accepted any propositions. It also raises a further inference that a knowledge of Mr. Fox's unwillingness to pass over L^d^ Loughborough was an ingredient in the ultimate determination of L^d^ Thurlow to adhere to Mr. Pitt and his Bill, and I was upon the point of adding, annex the Great Seal to that anomalous act; but I check myself, not only from an unwillingness to shock your ears by any disparaging epithet to a law

[1] Succeeded his father as 2nd Lord Kenyon in 1802; died 1855.

which I know you warmly approve, but from a recollection that the consummation of that courageous act in a lawyer was reserved for your friend Ld Eldon, and that those who knew Thurlow better than you and I, always maintained that he would never have screwed his courage *to the sticking place* so literally as to have actually stuck the wax to a Commission of which the King (he would not forget) could not have been cognisant. You have, and should have, an hereditary respect for Thurlow, who was a great friend of your father's, and I assure you I feel regard and even gratitude for his memory, from personal obligations to him and for much amusement and instruction derived from his conversation. But I am afraid, if truth be our object, we must acknowledge that he was not quite so wise as he looked (that, my uncle said drolly, was impossible), nor quite so inflexible and pure in his political principles as his sternness and moroseness of demeanour seemed to denote, and as his impracticable and unaccommodating way of dealing with his friends would, to be excused, have required. I have myself known enough of his proceedings with the late George IV. and his Court, when Prince of Wales, to convince me that the imputed duplicity of his conduct in 1788 is not utterly incredible or contradicted by his general character. I have a notion that Mr. Fox did, against his judgment and wishes, speak or write to Lord Loughborough in the sense he alludes to in his note to Sheridan, and that Loughborough's answer (which, unless I am mistaken, was far from being a short and simple "content") is at Holland House. When I go there I will search, and if I find it you shall have a

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copy. Pray understand that the uneasiness of Mr. Fox arose from no general preference of L^d^ Loughborough over Thurlow. He was thro' life more intimate with the latter and greatly preferred his society. Neither was he, as Croly ignorantly pretends, pledged to L——, but he was on that, as on all occasions, very averse to sacrificing to mere convenience the fair claims of a supporter for the purpose of gaining an opponent, a feeling which, I hope, will always characterise those who profess to act on his principles. When I am at H^d^ H^se^ you shall hear more on this subject; but perhaps you cry mercy, and have had more than enough already.—Prussia another time.

'Y^rs^,

'VASSALL HOLLAND.

'Postscript to the foregoing.—I sent three questions to a person well acquainted with the characters and events of 1788 and 1789, and you will here find them and the substance of his answers.

'1*st Query*.—How far Thurlow listened to proposals from P. of Wales and his friends to continue him in the office of Chancellor on the Prince of Wales becoming Regent?'

'*Answer*.—Thurlow listened to proposals from the Prince of Wales and his friends to continue him in the office of Chancellor on the P. becoming Regent. *How far* he listened is not so easy to say, because he had no conditions to make and not any were made to him; but he received the proposal and had it under consideration for some time. It was, however, over before the question of the Phantom was agitated in the House of Lords. How the proposal was ushered in is not exactly

known, but Dr. Warren was the go-between. Sheridan and Payne were the persons in the Prince's confidence in this and all other subjects of his arrangements, and regulated his interviews with persons who were to become connected with his Administration. From Sheridan and Payne was learnt the existence of this intrigue with Thurlow. The Prince had strong prepossessions that it would be greatly for the benefit of his government that Thurlow should be his Chancellor, and that his influence would defeat the creation of the Phantom in the House of Lords, and prevent the restrictions on the Regency. Thurlow did not discourage the proposals of the Prince to become his Chancellor.'

'2*nd Query*.—How far Loughborough acquiesced in any arrangements which would have prevented the Seals being offered to him?'

'*Answer*.—Loughborough never acquiesced in any arrangement which would have prevented the Seals being offered to him.—In Moore's Life of Sheridan, Mr. Fox's letter to Sheridan appears precisely as quoted by Croly, and the terms of that letter confirm the opinion that Dr. Warren was the go-between, and that the period must have been antecedent to any discussion in the House of Lords on the Phantom; but in Payne's letter to Sheridan there is matter which seems to establish that Loughborough might be acquainted with what was taking place with Thurlow, and he might possibly have acquiesced, tho' this conclusion would be a rash one. Payne in a letter to Sheridan says (see Moore's Life of Sheridan, p. 23) "The Prince was much pleased with my conversation

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with Lord Loughborough, to whom I do not write, as I conceive 'tis the same writing to you."

'Pitt's measure of the Phantom passed; the King's illness continued, and there was every reason to suppose that the Regency would be established under the restrictions. The Prince was determined to make a new Ministry, of which the Duke of Portland was to be First Lord of the Treasury, and Mr. Fox Secretary of State, to lead the House of Commons. The question as to the Great Seal was rendered a very difficult one as far as Loughborough was concerned. The Chancellor would not have the usual reversion of a Tellership, and Loughborough's private fortune was circumscribed in the event of a change. He was roused by what had taken place at the commencement of the King's illness on the intrigue with Thurlow, and he was not without suspicion of an intention on the part of the Prince to intrigue with Thurlow again.'

'*3rd Query.*—What was the event, if any, which induced Lord Thurlow to disappoint the expectations, so confidently entertained by the Prince, of his joining his party and opposing the Phantom and the Regency Bill?'

'*Answer.*—Lord Thurlow found the whole negotiation troublesome, and the conclusion uncertain. He could not fail to know that his appointment to the Great Seal was by no means agreeable to Mr. Fox, and did not meet with his cordial concurrence. He saw that it was better to slip out of it; and he did so in a manner, and with public declarations, suited to his general conduct, disregarding entirely what might be imputed to him. This may have been aided by Lord

Kenyon being engaged about that time in trying to bring about a good understanding between Lord Thurlow and Mr. Pitt, and other of his colleagues.'

'The same informant says to me, in his letter:—

'"I am satisfied Mr. Fox had no personal interview with Thurlow, and I do not think the Prince had any with him, on the subject of the Seals; possibly Sheridan and Payne might have had, but *Warren was the go-between.*"

'Thurlow could not be said to *betray* or desert Pitt, for he acted with him afterwards and *supported* his measure.

'Mr. Fox's letter, it may be said, proceeded on hearsay, but he must have had Thurlow's inclinations imprinted on his mind (my informant is right here): my uncle would never have engaged to do what was so very disagreeable, if he had not been satisfied that Thurlow courted it, although, as appears by the letter, he had no opinion of the courtship leading to a union, and only yielded to the Prince's importunity, or, if you will, command.'

Lord Holland to George Lord Kenyon.

'Newbury, December 18, 1838.

'My dear Lord,—Your letter of the 16th reached me this morning, at Bowood, and I do not like to let a post pass without acknowledging how much I am flattered by your consulting me on a topic which the lapse of time has made historical, and how much I was interested on perusing the extract from your father's diary. It would give me great pleasure to

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furnish you with any facts to illustrate the point on which you enquire, but till I have an opportunity, at Holland House, of looking over such papers as I have relating to the events of 1788 and 1789, I should be afraid of misleading you, by reporting as such my mere recollections of so distant a period. I am not without hopes of finding, among my uncle's papers, some things which may elucidate the nature and extent of his communications with Lord Thurlow, during the late King's first illness of 1788. That there was some communication, I am pretty confident, and it was always the opinion of those with whom my uncle was then, and I have been since connected, in politicks, that but for Mr. Fox's determination not to offer the Seals to Thurlow, without giving Lord Loughborough the refusal of them, L^d^ Thurlow would have connected himself more closely with the Whigs and the Prince of Wales. This, however, might be the persuasion of eager partisans, without sufficient ground. It is also fair to L^d^ Thurlow's memory to remark that, in taking a different view of the Regency question from Mr. Pitt (if he had done so), he could not have been justly taxed with inconsistency or desertion, much less with treachery—for the question was entirely new, and though in office with Mr. Pitt, he was certainly not then, and, probably, for a considerable time had not been, very cordially united with him.—His famous speech, in which he used the memorable words, "When I forget my King, may God forget me," on which Wilkes, *from under the throne*,[1] made the irreverent remark: "Forget you! you'll have no such luck—

[1] *Vide supra*, p. 201, *note*.

he'll see you d — d first," certainly somewhat surprised the Prince and his political friends, and had, it was always said, been resolved upon the night before, upon learning that, in case of a Regency, the Seals would, in the first instance, be offered to L^rd^ Loughborough. Your father seems to have acted the part of a common friend, in exerting himself to keep L^d^ Thurlow and Mr. Pitt together on that occasion, but there is, I think, little doubt that there was some difference on that and other matters subsisting between them, and that Lord Thurlow, by his language and communications, both with the Prince and my uncle, had shown a strong inclination to separate himself from his colleagues, on the Regency question. According to the version of my uncle's friends, his inclination was altered on learning the adherence of Mr. Fox to his political friend, L^d^ Loughborough. I have let my pen run on, but you must consider this as the mere report of the *Whig* gossip of the time, and subsequently—I do not vouch for it, but I hope to be able to give you something more accurate when I have access to my papers. Believe me, my dear Lord,

'Truly yours,

'VASSALL HOLLAND.'

From Lord Holland to George Lord Kenyon.

'Holland House, January 8.

'My dear Lord,—According to my promise, I have looked over my uncle's papers, in the hopes of finding some letter or note which would answer your question and elucidate both the causes and result of the letter to Sheridan, which you found in Mr. Croly's book. I

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have, however, been unsuccessful. The letter of L^d^ Loughborough, which, either from careless perusal of it some years ago, or from imperfect recollection of it afterwards, I had imagined related to negotiations of 1788 or 9, was manifestly written (tho' the date of the year does not appear on the face of it) at the time the Seals were in commission, during the Coalition Administration in 1783—it is docketed in some secretary's handwriting, "Lord Loughborough: his sentiments upon administration; how far serviceable the accession of L^d^ Thurlow might be to its permanency or interests." This it was which, probably, misled me. However, as you take interest in such matters, and the letter is well written and curious, I have had it copied out, and send it to you. It will, perhaps, raise a conjecture in your mind, as it certainly confirms a persuasion in mine, that L^d^ Thurlow was at no time so devoted an adherent to Mr. Pitt, or even to the Court, as to make him inaccessible to negotiations and coquettings with adverse parties, or to induce him to think that a coalition with them would be an act of *treachery* or *ingratitude*. It will also, very possibly, account, in your mind, as it does in mine, for the very strong expressions of dislike to the policy of giving up Lord Loughborough, which occur in Mr. Fox's letter to Sheridan. My uncle had, no doubt, the recollection of Loughborough's handsome behaviour to him and L^d^ North, in 1783, fresh in his mind in 1788; and, not impossibly, as strong an impression the other way of Thurlow's conduct in Lord Rockingham's Administration. It was repugnant to his nature to sacrifice the just pretensions of a friend

to the policy of pleasing, or the convenience of winning, probably for a short time, an enemy. When, however, I use the words friend and enemy, I mean only political supporter and adversary, for, as to friendship, Mr. Fox had much more private intercourse, indeed intimacy, with Lord Thurlow than with L^d^ Loughborough, and liked him much better in every relation, except that of a colleague or political associate, in which latter, even I knew enough of him to know he did not shine. His opinion on the Phantom, and the method of proceeding on the Regency, varied; above once he consulted Hargrave very much on the precedents and legal views of the question, and was, either from indecision of opinion, or from political caution, wavering for some time between the two or more methods proposed. It was while his mind was in that state, that both Sheridan and the Prince were so eager and so sanguine about his accepting the Seals from the Prince Regent. Which of the two suggested that notable scheme to the other I know not, but both of them *at all times* were not only ready, but on the look out, to curry favor or to gain advantages from an enemy by the sacrifice of friends. In looking for Loughborough's letter, I have fallen in with much more about Thurlow, in 1783. He, probably, displeased L^d^ North's warm friends (L^d^ North was too good-humoured to be displeased with any living creature) by remaining in with L^d^ Rockingham and L^d^ Shelburne, and he thwarted and offended L^d^ Rockingham's and L^d^ Shelburne's Cabinets by giving them the "faintest and loosest" support possible. L^d^ Loughborough ingratiated himself extremely, in the

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meanwhile, by his steady adherence to L^d North, both before and after the Coalition; the consequence was that, on the formation of the Coalition Administration, L^d Thurlow was *nec Foxio nec Northio dissentientibus*, what Walpole miscalls "proscribed." Now, I think, my dear Lord, you will say, "Hold, enough," and have hardly patience enough to hear a word about Papists and Russians. . . . . .

'I am, my dear Lord,

'Truly yours,

'VASSALL HOLLAND.'

The following extracts from Lord Kenyon's diary have reference to the foregoing events:—

'*Nov.* 29.—Dined at Mr. Pitt's: Lord Chancellor, Marquis of Stafford, Earl of Chatham, Marquis of Carmarthen, Visc^t Weymouth, Lords Sydney and Hawkesbury. Consultation on publick affairs. The King was removed this day from Windsor to Kew.

'*Dec.* 1.—Dined at Marquis of Stafford's: same company as at Mr. Pitt's, with the addition of Earl Camden. Signed a paper with the Cabinet Ministry, requesting the Queen to take upon her the management of the King's person during his illness.

'*Dec.* 3.—Dined at Lord Sydney's: L^d Chanc^r, &c.; and consulted about what was to be done at Privy Council, and in Parliament. Attended the Privy Council; examining physicians, &c.

'*Dec.* 4. — Parliament met on the adjournment. Dined at Lord Chanc^r's, with the Marq^s of Stafford. Much confidential conference, wherein the Marq^s and I agreed in our wishes about the Chancellor's conduct.

'*Dec.* 7.—Lord Chanc^r with me about publick affairs. 1789.

'*Dec.* 8.—Dined at L^d Chanc^r's. He in very ill humour with Mr. Pitt. I endeavoured to soothe him, and stated the impropriety of his thinking of private quarrels in this crisis of publick business.

'*Dec.* 12.—Dined with L^d Chanc^r, who had been this day with the King, at Kew.

'*Dec.* 14.—Twice at Mr. Pitt's to meet some of the Cabinet, about the motion to be made on Tuesday in the House of Commons.

'1789, *Jan.* 4.—Sent for by Mr. Pitt, to attend a Cabinet on the Regency.

'*Jan.* 6.—Attended another Cabinet Council.

'*Jan.* 25.—At Cabinet Council at Mr. Pitt's.

'*Feb.* 3.—At a Cabinet Council at L^d Chanc^r's in evening, settling the Regency Bill.

'*Feb.* 20.—Dined at L^d Chanc^r's, who had been at Kew with the King, and had much conversation with him, which he related to me.

'*Feb.* 24.—Dined with L^d Chanc^r, who had been at Kew with the King, and with the Prince.

'*March* 5.—At Kew with the King, by his special command. Had a long private conference. He delivered me many of his private papers to take home and consider for him: treated me most graciously.'

It was at this interview that the King put the somewhat embarrassing question to the Chief Justice:—

'Frederick only voted once against us; did he?'

'Your Majesty,' he replied, 'must be aware to what trials one in his situation is exposed.'

'Very true,' said the King, 'very true.'

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The King's recovery was celebrated by a service in Westminster Abbey; and by a general illumination, of which Lady Kenyon gives the following account:—

'The town will be beautiful, for there are more devices than ever I saw: Lord Mansfield's house has G. R. in little lamps on the outside his house. Many have a crown, and G. R.; some the word "Rejoice" over the gateway; at the Rolls there are 300 lamps to form the crown and G. R.—always a touch extraordinary there. Lord Chesterfield's house they say is covered with Scripture phrases. . . . Lord Kenyon is dining at the Duke of Richmond's. He was at Kew on Sunday, found the King vastly well, staid with him above an hour, was most graciously received and entrusted with as many of his private papers as Lord Kenyon could lift into his coach. The King spoke with the highest approbation of the Queen's conduct, spoke of the Duke of Gloucester with affection, of Cumberland with compassion, of some of the rats with contempt; but saying they had done as he expected they would, if ever they found an opportunity. Some of them will be turned out of their places, and I hope honester men put in. It is expected the Prince will make a speech to-night in the House. It is well, if he does not expose himself. I dare not write all I could tell you about his party. Lord Kenyon goes again to Kew on Tuesday.'

CHAPTER IX.

Trial of Stockdale—Mr. Fox's Libel Bill—Impeachment of Warren Hastings—Dismissal of Lord Thurlow—Cowper—The French Revolution—Alien Act.

(1789—1792.)

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ONE of the most important cases which came before Lord Kenyon in the early part of his judicial career, was that of the King v. Stockdale.

A certain Mr. Logan, a minister at Leith near Edinburgh, had taken considerable interest in the trial of Warren Hastings. He was one of the authors of the English Review, and in that capacity had investigated the subject with some care, and amassed a considerable stock of information, which he thought it worth while to print and publish. He accordingly brought out a pamphlet which professed to give a fair and impartial account of Hastings' administration.

Unfortunately for its author, the pamphlet contained also some unfair and by no means flattering comments on the conduct of the House of Commons and the managers of the impeachment.

It stated, amongst other matter, that the Commons had voted thirteen out of the twenty articles without even reading them.

Fortunately for the country, and for the House of

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Commons, considerable licence is now allowed to the public prints in their comments on the proceedings of the legislature: but in the reign of George III., such an assertion as the foregoing was rank blasphemy.

The matter was warmly taken up by Mr. Fox, who complained in his place in Parliament of the breach of privilege which it involved, and threatened to prosecute Stockdale, the publisher, for a libel.

From various causes, the trial was deferred for nearly two years, when it came on in the Court of King's Bench, before Lord Kenyon. The Attorney and Solicitor-General, Bearcroft and Wood, appeared for the Crown; while Stockdale was defended by Erskine and Dayrell.

The prosecution was temperately conducted; 'the offence,' said Macdonald, 'I impute to him is that of calumniating the House of Commons, not in its ordinary legislative character, but when acting in its accusatorial capacity.' Erskine's defence was one of his most brilliant efforts.

'On the day of the trial, the rules of the Court did not permit any further postponement, and Mr. Erskine was so ill, that it is remembered in Westminster Hall he was scarcely able to stand up to address the jury.'[1] He, notwithstanding, electrified his audience by the brilliancy of his argument and the passion of his appeals.

After the Attorney-General had replied, Lord Kenyon summed up. He said:—

'Gentlemen of the jury, I do not feel called upon to

[1] State Trials, vol. xxii. p. 253; Edinburgh Review, vol. xvi. p. 109. Cf. also Lord Stanhope.

discuss the nature of this libel, or to state to you what the merit of the composition is, or what the merit of the argument is; but merely to state what the questions are to which you are to apply your judgment, and the evidence given in support of this information. It is impossible, when one reads the preface to it, which states that the libel was written to asperse the House of Commons, not to feel that it is a matter of considerable importance: for I do not know how far a fixed general opinion that the House of Commons deserves to have crimes imputed to it, may go: for men that are governed will be thereby much influenced by the confidence which should be reposed in Government. Mankind will never forget that governors are not made for the sake of themselves, but are placed in their respective stations, to discharge the functions of their office for the benefit of the public, and if they should ever conceive that their governors are too inattentive to their duty, as to exercise their functions only to keep themselves in power, and for their own emolument, without attending to the interests of the public, government must be relaxed, and at last crumble into dust; and therefore, if the case be made out which is imputed to the Defendant, it is no doubt a most momentous case indeed: but though it is so, it does not follow that the defendant is guilty; and juries have been frequently told, and I am bound, in the situation in which I stand, to tell you, that, in forming your judgment on this case, there are two points for you to attend to, namely:—

Whether the Defendant, who is charged with having published this, did publish it: and whether the sense

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which the Attorney-General by his inuendoes in this information has affixed to the different passages, is fairly affixed to them.

. . . . . .

'In applying the inuendoes, I accede entirely to what was laid down by the Counsel for the Defendant, that you must upon this information make up your minds that this was meant as an aspersion upon the House of Commons, and I admit also, that in forming your opinion, you are not bound to confine your inquiry to those detached passages which the Attorney-General has selected as offensive matter and the subject of prosecution. But let me on the other side warn you, that though there may be much good writing, good argument, morality, and humanity in many parts of it, yet if there are offensive passages, the good part will not sanctify the bad part. . . . .

'If I were prepared to comment upon the pamphlet, in my situation it would be improper for me to do it: my duty is fulfilled when I point out to you what the questions are which are proposed to your judgment, and what the evidence is upon the questions:—the result is yours and yours only.'

I have inserted this direction somewhat at length, as it was afterwards made the subject of an eccentric but violent attack in the House of Lords. It must be acknowledged that Lord Kenyon here conceded much of the principle for which he afterwards fought so desperately, that the question of libel or no libel is for the judge and not for the jury to decide; nor can his language on this occasion be considered quite consistent with the tenacity with which he opposed Mr. Fox's Libel Bill. This

subject, which had long engaged the attention of lawyers, was now brought prominently before Parliament. The prosecution of Luxford, the printer of the Morning Herald, furnished an ostensible reason for an alteration in the law of libel. He was convicted of printing and publishing a libel on the King's Ministers, and was sentenced to be imprisoned for twelve months and to stand in the pillory. The severity of his sentence seemed altogether out of proportion to his offence, and the excitement which it raised encouraged Mr. Fox to bring the whole subject before the House of Commons. In a long and able speech, he showed the anomalies which occurred in trials for libel, and resisted the doctrine, which had originated with Lord Raymond, and had received the sanction of the Great Lord Mansfield, that the question of libel or no libel is matter of law and not matter of fact. A Bill affirming the rights of juries to judge of the innocence or criminality of the subject-matter was passed through the House of Commons during the Session of 1791, and came before the House of Lords for a second reading on the 8th of June. The Lord Chancellor, however, succeeded in postponing the consideration of the Bill till the following Session: when he took every opportunity of opposing its progress.

He was joined by Lord Kenyon, whose aversion to the measure was no less sincere.

'He expressed his dislike to the loose and vague manner in which the Bill was worded. He declared its principle to be a direct contradiction to the practice of a long series of years; and that it was totally inadequate to the purpose it was meant to effect. It

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tended to alter the established law of the realm, and, considered in that light, was a new and a dangerous innovation upon the Constitution. Lord Hale, one of the brightest ornaments of the English law, had defined the extent of the power of juries in so clear a manner, that no room was left for a doubt, "the province of the jury is to find the fact, the law remains with the judge: unless the law and the fact are blended together: in that case the jury either find a verdict generally or specially, stating the fact and leaving the application of the law to the judges." Lord Kenyon concluded by moving that a series of questions be referred to the Judges for their opinion.

'(1). On the trial of an information or indictment for libel, is the criminality or innocence of the paper (set forth in such information or indictment as the libel), matter of fact or matter of law, where no evidence is given for the defendant?

'(2). Is the truth or falsehood of the written or printed paper material, or to be left to the jury, on the trial of an indictment or information for a libel, and does it make any difference in this respect, whether the epithet false be or be not used in the indictment or information?'

Lord Loughborough added some further questions, and the whole were referred to the Judges: who gave their opinion in the course of a few days through the Lord Chief Baron.

The answers, which, as Lord Camden observed, were very abstruse, agreed in the main with the doctrine then prevalent. The promoters of the Bill pressed it forward none the less resolutely, and on the debate on the second reading, were materially aided by Lord

Camden, whose high character and great legal knowledge commanded universal respect. He was followed by Lord Stanhope, who made an eccentric attack upon the Chief Justice :—

'The learned lord who presided over the Court of King's Bench had on a former day, among other very extraordinary expressions, said that "he found, from the Bill, that libellers had their friends." [Lord Kenyon denied that he had said any such thing.] The learned lord had been the Judge in the case of Stockdale, and it was the illegal direction to the jury given by the Judge that had been the occasion of the present Bill. He commented on that direction, and said, in any case, whether of murder, burglary, libel, or anything else, the jury were to find not only the crime of murder, but whether the prisoner had been guilty of manslaughter, or, in fact, whether he was guilty at all.

. . . . . .

'He put the case that an action for a libel was brought for using a modern word, not to be found in any grammar or glossary, viz. for saying that a man was a "great bore:" a jury would laugh at such a ground of prosecution, but the judges would turn to their grammars and glossaries, and not being able to meet with it would say, they could not find such a phrase as a "great bore," but they had found a wild boar, which no doubt it meant, and yet it could not be, as a wild boar had four legs and a man was a two-legged animal; then it must mean that the plaintiff was like a wild boar in disposition, which was a wicked libel, and therefore let the defendant be hanged.

. . . . . .

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'He mentioned Blackstone's declaration, that there was no more liberty in this country than there was formerly in France, or at present in Turkey, and the great difference between a trial by jury and a suit in Chancery. The one decided a cause in a day; the other continued, not from year to year, like Mr. Hastings' trial, but from generation to generation. In his own family, in the Court of Chancery of Ireland, a suit had been pending, which, considered as a suit in Chancery, was tolerably soon ended, viz.—in forty-two years, and then the parties took it out of Court and concluded it by a compromise, and that was what was emphatically termed Chancery dispatch. This reminded him of a celebrated bon mot of a noble ancestor of his. A person had bought a horse, which proved uncommonly restive and unruly, overleaping every fence and mound within which he was placed. The gentleman who owned the animal, mentioned the circumstance to the late Earl of Chesterfield, and said, he believed he must build a wall round the horse to keep him in due bounds; when the Earl said, "Put him in the Court of Chancery, and I'll warrant you he'll never get out of it."'

. . . . . .

'Lord Kenyon said, after the unprovoked attack that had been made upon him, he must appear the meanest of mankind in their lordships' estimation, if he did not endeavour to repel the attack. Every man could not command the great abilities, and the great eloquence that they had heard exhibited that day, but there was one thing in every man's power, viz.—veracity. The noble lord, instead of instructing himself upon points respecting which he had the means of

information, chose rather to attack him upon false facts; he surely, therefore, had some right to complain. With regard to Stockdale's trial, the noble Earl had misstated the whole of that matter. The jury in that case had brought in a verdict completely satisfactory to his mind, nor had he at the time expressed the smallest displeasure at it; and so far from his direction to the jury in that cause having been wrong, Mr. Erskine, the counsel for the Defendant, had told him, as soon as the hearing was over, that it was precisely what he wished it to have been. The noble Earl had done everything to ridicule all that was held sacred by every thinking and temperate man. With regard to himself, it had never happened to him, when he sat as a Judge, to have a dispute with a jury on a subject of libel. He mentioned a case, in which one juryman entertaining an opinion contrary to his advice and direction, had stood out, and at length prevailed on the other eleven jurymen to come over to his opinion, contrary to their own judgment, in consequence of which they had not broken their oaths, but had given an imperfect verdict. A new trial, however, was granted, and the second jury gave a pretty striking proof of the opinion they entertained of the former jury and their verdict, by unanimously and almost immediately finding the Defendant guilty. He complimented Lord Camden on his mode of arguing his opinion, which, he said, the noble Earl had done with decency, with dignity, and with eloquence. He declared no man living admired a trial by jury more than he did, and they that saw it most frequently would always be those who admired it most. He

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quoted Lord Hardwicke to prove that a Judge of such acknowledged wisdom and integrity was of opinion that the questions of law arising upon facts adduced in evidence were not to be determined by a jury.'

['The thing which governs greatly in this determination is that the point of law is not to be determined by juries. Juries have a power, by law, to determine matter of fact only; and it is of the greatest consequence to the law of England and to the subject, that the powers of the Judge and Jury should be kept distinct; that the Judge should determine the law, and the Jury the fact; and if ever they come to be confounded, it will prove the confusion and destruction of the Law of England.'[1]]

Lord Kenyon was opposed on this question to his old chief, Lord Lansdowne, who, in a very able speech, supported the Bill. 'He did not blame lawyers for making a stand against the present Bill: it was well worth a struggle on the part of the profession: it was a proud, ambitious profession, desirous of obtaining power over all: and if the noble lord at the head of the King's Bench could overthrow it, as his lordship had studied politics as well as law, he would be lord paramount of England. The proudest of their lordships must bend submissive to his nod. Before they decided against the Bill, however, let them look at what had happened at Rome, as stated in the luminous pages of the ablest historian that ever graced his country, and they would see that the very same conduct pursued by those who meant to abuse power, when they could completely grasp it, was what the Judges had at

[1] From MSS. notes for his speech in Lord K.'s handwriting.

all times pursued. At one time, they appeared to be eager to obtain it, then they let it go, then they affected to be alarmed, for fear those to be tried should be injured: and had acted as the learned lord at the head of the King's Bench had done, when he stated himself to be, in the former debate, so tender to the subject that he only wished for the power in order to protect the subject, in cases of trial for libel, from being hastily delivered over to judgment by the ignorance of juries. Thus they were one day all tyranny, the next all humility; but their design all along concealed the same sting, the same arrow lurking at bottom; and no doubt, when firmly established, the same would happen as at Rome, for they all knew that Rome never saw a day's liberty afterwards, and what was worse, not a single family knew an hour's peace. What might not happen, he asked, if the legislature did not prevent it? If God Almighty, in His mercy, were to send among us another Locke, or another Montesquieu, he doubted not but they would be deemed libellers. Let noble lords consider what had happened. He remembered, when in office, having found in the Secretary of State's office a note, that a paper was to be prosecuted for having said that the King had got a cold.' . . .

The Bill was opposed in a spirited speech by the Lord Chancellor, but was carried on a division by fifty-seven votes to thirty-two. The Chancellor, the Chief Justice, Lord Bathurst, and other Peers, recorded the reasons for their opposition in a protest which was entered in the journals. [1]

[1] Parl. Hist. vol. xxix. pp. 1294. 1421–1431.

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Though he was not successful in his opposition to the Bill, Lord Kenyon must have been gratified by the tone of the debate, as regarded his own judicial character. One after another, the principal supporters of the Bill took the occasion of disclaiming any intention of reflecting on his conduct in his office. The Marquis of Lansdowne, especially, pronounced a very handsome eulogium on his ci-devant Attorney-General.

The Chief Justice had nobly refused to avail himself of the privilege to which he was entitled, of selling the office of Clerkship of Assize; and not content with the abnegation, had brought in a Bill to abolish the office as a useless sinecure. He thus continued to carry out in practice those measures of economy and retrenchment which he had advocated before he was elevated to the Bench.

In allusion to this circumstance, which alone is sufficient to refute the ungenerous sneers of previous biographers at his so-called parsimony, the Marquis said: 'There was a Bill on the table sufficient to convince all mankind of the nobleness of mind which the author of it (Lord Kenyon) possessed. The Bill he alluded to was a Bill for abolishing the office of Clerk of the Assize. Their lordships might know that the 5th and 6th of Edward VI. prohibited the sale of any office, except by the two Chief Justices and Judges of Assize. It was well known that when prisoners had nothing else to detain them, they were kept in gaol by the fees which they were obliged to pay to clerks of the Assize. This was fully explained in a book which was well worthy of their lordships' perusal—Mr. Howard's book on Gaols. . . . By the Bill on the

table, the noble and learned lord had immortalised himself.[1] Although this appeared to be an act of so much virtue, he was not sure that the House of Commons had not so modified and altered it, as in a great measure to have defeated the benevolent purpose of its noble author. He hoped the same nobleness of mind would be carried a step further, and get that clause in the Act of Edward VI. repealed, which excepted Chief Justices and Judges of Assize, and allowed them to do that which the Act stated to be base and scandalous in any other man. The bringing in of the Bill respecting the office of clerks of Assize, was an act of a single nature and of a single kind. He knew the virtue, the disinterestedness, the honesty and integrity of the noble lord who had brought in that Bill.'[2]

The position which Lord Kenyon occupied furnished him with a sufficient excuse for keeping silence in the party debates of the House of Lords, an exemption of which he was not sorry to avail himself. So notorious was his aversion to the House of Lords, that George the Third is reported to have once said to him at a levee: 'I hear, my lord, that you would rather listen to me than to the Peers.'[3] If Lord Kenyon's reputation as a statesman has suffered in consequence of this, it is probable that his position on the Bench gained proportionately in dignity. His successor, Lord Ellenborough, who was persuaded to enter the Cabinet, never ceased to regret the step. He

[1] The circumstance is not even mentioned by previous biographers.
[2] Parl. Hist. vol. xxix. p. 740.
[3] Townshend's Lives of Twelve Eminent Judges.

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afterwards assured Lord Sidmouth, that if he had known how much the appointment would have been canvassed, he would never have accepted it.[1]

The Chief Justice, however, was a regular attendant, and as a rule supported the general policy of the Government. When the question arose whether the impeachment of Warren Hastings had abated, by the dissolution of Parliament, he supported Lord Thurlow in his opinion that the impeachment was at an end. 'The whole of the question appeared to him to lie between the two resolutions, that of 1678 and that of 1685. One of them had been made on the spur of an occasion, which was a bad feature in any rule that was meant to apply generally in future, and what was still worse, that resolution was meant, as it afterwards turned out, to be calculated to countenance the assassination of an individual under colour of law. Whatever, while their passions were warm and their prejudices strong, men might think of the conviction and sentence of the unfortunate Viscount Stafford, he believed there was no man now, when reason had resumed her seat and sober reflection had succeeded to the violence of party feeling, but was ready to agree with him in pronouncing the execution of Lord Stafford a legal murder.' The House of Lords adopted the views of Lords Camden and Loughborough in preference to those of Lords Thurlow and Kenyon.[2]

The antagonism of Pitt and Thurlow outlived the illness of the King. In the House of Lords, especially, the latter took every opportunity of thwarting the

[1] So Lord Sidmouth told the second Lord Kenyon.

[2] Parl. Hist. vol. xxix. p. 536.

Minister; and in private he was continually sneering at Pitt and his measures. 'If a girl had talked law in those terms,' he said on one occasion, 'she might have been excusable.' [1]

As early as April, 1789, Lord Kenyon endeavoured to effect a reconciliation.

'With Mr. Pitt, to endeavour, if possible, to remove some of the grounds of shyness between him and the Lord Chancellor.' [2]

The effort was unsuccessful. 'The Chancellor,' says Wraxall, 'remained during the recess in a state of sullen alienation.' The estrangement was increased by the haughtiness of Mr. Pitt, who refused or neglected to consult his colleague with respect to matters on which his legal opinion was really required.

These are alluded to in the correspondence which follows.

It must be owned, whatever had been Pitt's provocation, that his conduct was anything but conciliatory. No doubt he would even at this period have dispensed with Thurlow's services, had he felt his position strong enough without him.

This is evident from a letter to Mr. Rose, which I quote from his Memoirs:—

Mr. Pitt to Mr. Rose.

'Nov 8, 1789.

'Dear Rose,—A person on whom I can entirely rely told me yesterday that the Chancellor had said to him very lately, that he should probably soon receive a letter from Mr. Grenville to give up the Seals, for that Mr. Rose had said before a person, who he must have

[1] Nicholls' Recollections. [2] Diary, April 24, 1789.

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known would repeat it, that we had made up our minds to it, and would go on very well without him. You will easily imagine what degree of credit I give to this absurd story, but, strange as it is, it is very capable of making an impression on his mind. The chief thing I want is that you would recollect whether, in any company where you thought yourself safe, you have used any warm expression about him, as might very naturally happen, which could afterwards be exaggerated or perverted into something that may have laid the foundation for the suggestion.

'As to your having said anything like what is represented, I do not entertain a moment's idea of it; and my object is to trace, if possible, where so mischievous a suggestion originated, and to consider whether it may be worth while to convey some contradiction of it to the Chancellor. . . . . .

'Yours most sincerely,

'W. PITT.'[1]

So serious did the estrangement appear to the King, that he attempted by his personal influence to bring about a rapprochement.

The King to Lord Thurlow.

'Nov. 22, 1789: Windsor.

'My Lord,—It is impossible for me not to be much impressed by whatever you suggest, particularly on legal points. I have therefore fully considered your idea of having a question stated to the Attorney and Solicitor-General whether the intended pension for Lord Auckland can be legally granted. As the mea-

[1] Rose's Memoirs.

sure was proposed by Mr. Pitt, I thought it right to communicate your doubts to him, and my idea of referring it rather to Lord Kenyon, whose legal knowledge is certainly equal, and his situation superior to that of the above-mentioned gentleman: besides, he can be applied to in a less public manner. Mr. Pitt felt the propriety of my proposal, and assured me he would cordially submit to whatever was the decision of so respectable a person. Having advanced thus far, it is now necessary for me to state this proposal to you, who, I am certain, cannot but approve of a reference to Lord Kenyon. For the greater precision, I have preferred stating this on paper to a conversation, and shall take no further steps till I hear from you.

'I also mentioned to Mr. Pitt the industry with which a coolness between you and him is propagated, and how detrimental such an opinion must be to my affairs. He has, in the strongest and most explicit terms, assured me of his inclination to live on the most cordial terms with you, and is desirous for that purpose of having a thorough explanation with you on all subjects, and more particularly on those that may have (1) any shyness; I think I am certain your attachment, and I may say, affection for me will, when apprised how essential I think a good understanding between you is to the ease of my mind, as well as to the prosperity of public affairs, make you equally desirous of having such intercourse as may effect what I have so much at heart.[2]

'GEORGE R.'

[1] Sic.

[2] Copied from the original, kindly lent me by the Rev. Chancellor Thurlow, Rector of Malpas, Cheshire.

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The following are extracts from the King's letter to Mr. Pitt alluded to above :—

'I have carefully perused the correspondence transmitted to me this morning, which has arisen on a vacant office in Scotland, and which certainly shows that the Chancellor's temper actuates him more than the goodness of his heart and of his head should permit. But an experience of thirty years convinces me that in most men the former too frequently has the advantage.

'Mr. Pitt's account of the conversation that has since been held by the Chancellor with Mr. Dundas is a proof that he is open to join cordially (which I look upon as essential to the public service), provided the old complaint on the subject of Mr. Rose could be removed.

. . . . . .

'My sentiments can be conveyed on the whole of this matter in a few words. The state of the House of Lords is such that Opposition have many speakers, and on the side of Government only the Lord Chancellor and Lord Hawkesbury: for the Chief Justice, though a worthy man and able lawyer, does not succeed as a debater. This shows how necessary it is to remove every cause of misunderstanding with the Chancellor, who is certainly to be gained by affection. With all his appearance of roughness, he has a feeling heart, and that alone can guide him in contradiction to his temper.'[1]

. . . . . .

[1] Stanhope's Life of Pitt, vol. ii. Appendix, p. xii. Cf. also Buckingham Papers, vol. ii. p. 179.

For Lord Thurlow's answer, I am indebted to his relatives:—

Lord Thurlow to the King.

'November, 1789.

'By a mistake of his servants which he cannot sufficiently regret, your Majesty's gracious letter was not sent after the Chancellor into the country, which has prevented him from making his acknowledgments more instantly.

'There is no merit in showing that anxious attention to your Majesty's case which every obligation of duty and gratitude so indispensably enjoins. In comparison of such an object, every topic of private complaint must appear too worthless to be remembered. Impressed with this sentiment, he has always been ready, and still remains so, to communicate in the most unreserved manner with Mr. Pitt, upon every subject which he has thought, or may think fit to impart to him. If he has not been fortunate enough to manifest that upon every occasion which has occurred, he has disappointed his own intention, which he will pursue for the future, if possible, with more care.

'In the instance of Lord Auckland's pension, Mr. Pitt seems to treat the Chancellor's hesitation as a contest with him, which he will cordially submit to the decision of Lord Kenyon. But the Chancellor begs leave to assure your Majesty that his hesitation sprang entirely from doubts which appear to him serious, arising out of the subject itself.

'There certainly is no opinion in England, in which the Chancellor would find so much satisfaction, or re-

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pose his safety and honour upon with so much confidence, as on that of Lord Kenyon.

'He humbly begs his Majesty will be assured that no industry shall be wanting on his part, on all other occasions, and in every respect, to fulfil effectually those commands which his Majesty has been graciously pleased to honour him with.'

The drift of Lord Kenyon's opinion may be gathered from the following, apparently the rough draught of a letter to Mr. Grenville:—[1]

'I feel myself in want of apology for not writing to you sooner on the subject of the conference I had the honour of having with you in St. James's Square, but I hope my official engagements will be my excuse, and besides that excuse, I have failed once or twice of finding Mr. Pitt in town, when I called in Downing Street.

'I called at Lord Chancellor's as you wished, to learn the grounds of the doubts he entertained, and he was so good as to give me written the notes of what his searches on the subject of the four and a half per cent. had furnished him with; at the same time expressing his opinion that further searches should be made in the proper places. When I sat down to begin this letter, I tho[t] of sending you a mere reference to the instruments to which L[d] Chancellor referred; but upon further consideration I send you the paper he delivered to me, begging that I may have it again, when you have made such use of it as you think proper. In

[1] Diary, November 26.—'Received His Majesty's commands, through Mr. Grenville, to endeavour to settle differences between the Chancellor and Mr. Pitt.'

doing this I do not transgress his permission, as he told me he wished to have the most unreserved communication with you and Mr. Pitt on the subject.

'The influence which these references have had on my mind at present is, that the four and a half per cent. cannot, consistent with good faith towards the Colonists, be applied for the purposes now intended. The entries in the journals of 24th March, 1701, 30th March, 1702, and the orders consequent thereupon, are very strong. It may be said that these are not legislative Acts binding on the executive power, and I do admit that there may be a great distinction between reviewing the act when done, and considering the expediency of it before it shall be done—perhaps factum valet, but it does not follow that fieri debet. So much, at present, for that head. But be that as it may, I really doubt extremely whether the pension in question can be granted consistent with the Act of 22nd George 3. c. 82. s. 17. There is a particular preamble to that section, and that preamble and the enacting words are in very general terms.[1] It is true that most of the provisions of this law apply to the Civil List Revenue only: but it is also observable that in the 19th Section, and in other parts of the Act, where the regulations are meant to be confined to the pensions on the Civil establishment, the expressions of the Stat. are so confined.

'Therefore it seems to me at present much too hazardous to grant a pension to the extent now intended, without a parliamentary explanation of the general words in the 17th Sect. I have seized the first

[1] 'And for the better regulation of the granting of pensions, and the prevention of abuse or excess therein, be it enacted,' &c.

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leisure morning I have had, to give you the trouble of this letter. And am, &c.'

Whatever hopes there might still have been of an ultimate reconciliation were finally extinguished, when Mr. Pitt decided to raise Mr. Grenville to the peerage. This provoked Lord Thurlow into open hostilities.

The uncertainty of the Prime Minister as to the conduct of his Chancellor in the House of Lords, was no doubt the principal cause of Mr. Grenville's elevation, and the Chancellor was not slow to appreciate the Minister's motive. Some of his own supporters indeed remonstrated with Mr. Pitt on this evident mark of distrust in the Chancellor, at the very time when he was professing a desire for reconciliation with him.[1]

'I cannot but very much regret,' writes the Duke of Richmond to him on the 24th, 'that Mr. Grenville's being called up to the House of Lords appeared to you to press for such an immediate decision as to prevent the wish you had of conversing with me upon the subject, from taking place. . . . . In the first place, I think it ruin to Mr. Grenville. . . . .

'I have before observed that I think Mr. Grenville must have some strong predilection for this measure, and perhaps Mr. Dundas, whom you mention to have had some concern, at least, in what has led to it, may not be sorry to have Mr. Grenville out of way in the House of Commons. The hurry and manner in which this business was conducted, not allowing twelve hours for the return of your messenger, lead me to

[1] Cf. also Life of Wilberforce, vol. i. p. 284. 'Pitt told me of Grenville's peerage and the true reasons (distrust of Lord Thurlow).'

these suspicions; and, as the French say, I doubt your religion and good sense have been surprised. *But of all things, this is a measure the least calculated to conciliate the Chancellor, who is not fond of Mr. Grenville,* and who with some reason will think he ought to have been consulted as to the person who is to have the lead in the House of Lords. But perhaps Mr. Grenville and Mr. Dundas, who know that the Chancellor does not like either of them, may not be sorry to force him out. I wish this may not end in breaking up that Administration on which they both depend.'[1]

The result, as regarded the Lord Chancellor at any rate, was not very far different from that prophesied by the Duke. He at once associated the new Peer with the Minister in his dislike, which grew more and more rancorous and intolerable. The situation is briefly described by Wraxall:—

'Thurlow was sullen, stern, and intractable; Pitt imperious, inflexible, and dictatorial.'

Lord Kenyon was assiduous in his good offices.

'*March* 25, 1791.—'Breakfast with Lord Chancellor: persuaded him to confer with Lord Grenville on publick measures.' Thus matters went on through the year 1791: the Chancellor carrying on a sort of guerilla warfare against his colleagues in the House of Lords, 'proposing nothing, and opposing everything.' It was evident that the time was not far distant when the two Chancellors must cease to sit in the same Cabinet. The crisis was precipitated by the imprudence of Lord Grenville.

The Rangership of St. James' and Hyde Park had

[1] Stanhope's Life of Pitt, vol. ii. pp. 79, 80.

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fallen vacant on the death of Lord Orford, and Lord Grenville, who had a keen eye to his own interest, was most anxious to obtain a grant of the office *for life* in exchange for a reversion to an office in Ireland, which had been given him some time previously. He succeeded in persuading Pitt to support his application. 'Pitt,' he writes, 'is entirely ready to acquiesce in what I judge best, though I can see he is to a certain degree alarmed at the impression it may make.'[1]

The legality of the appointment was unquestionably doubtful. An Act passed in 1782[2] had regulated very strictly the granting of pensions and places for life, and the Lord Chancellor was not slow to perceive that it was a moot point whether the grant in contemplation would not come under its provisions.

On the subject, he thus addresses Lord Kenyon:—

Lord Thurlow to Lord Kenyon.[3]

'January, 1792.

'My dear Lord,—I don't mean to give you any more trouble on the patent, for the reason I told you this morning. But having read Trelawney's case, let me tell you what occurs upon it.

'The law, as expounded in that case, seems to be that an office with a fee to charge the inheritance of a Bishop may be granted, since the statute (which does not touch offices), *as* it was *usually* granted before. But if it be granted with *new* fee, or *unusual* term, it will not be good; but considered as a device to charge

[1] Buckingham Papers, vol. ii. p. 197, 22 George III. c. 22. § 17.

[2] Before alluded to—*vide supra*, p. 241.

[3] Endorsed, 'This was on Lord Grenville's obtaining a grant of the Rangership of Hyde Park and St. James' Park *for life*.'

the inheritance. If this had been a Bishop's office, usually granted *during pleasure*, with the herbage as a fee, I apprehend that it would be *inconsistent* with the rule of that case to support it.

'For tho' offices are certainly not within the statute, and possibly offices with fees, &c. payable by others than the Bishop, or rather without a salary payable by him, might *therefore* be grantable as before, yet, if the Bishop's inheritance be charged with salary for which distress would lie, it seems by that case to be otherwise.

'Tho' I admit the quality of *necessary* was not requisite, as that case was found, perhaps, in some case, that might have sustained a grant otherwise invalid.

'Yours sincerely,

'T——.'

'This seems more like the case of the Parker, w^h^ is found *not* to be an *antient* office, not *antiently* and *usually* granted with annuity for life of grantees, but *at the time of the Act* merely nominal; from which last circumstance I infer that it existed at the time of the Act.'

Lord Thurlow's feelings towards Lord Grenville are illustrated in the following, which is not dated, but must have been written about this time:—

'My dear Lord,—I am so sensible of your goodness in assisting me, and of the trouble it occasions you, that I don't wish to increase it. I was in hopes that the Pawnbrokers' Bill would have been negatived at once, and that the Roman Catholick Bill would have been put off to another session: but Lord Grenville gives

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the silliest of reasons for going on with the silliest of Bills, that it has cost a great deal of time in the House of Commons, which, with all the pride of a Minister, he commands shall stand as a reason for precipitating it through the House of Lords.

'The Bill for mobbing the Judges he has promised shall stand over to next session, which I mention that you may keep him to his word.

'Yours, &c.

'T——.'

While the excitement raised by this ill-advised measure was still simmering, the Chancellor committed himself to a hostile vote on the National Debt Bill, and nearly succeeded in defeating the Ministry. An amendment entirely subversive of the principle of the measure was only defeated by three votes. So narrow an escape convinced Pitt that he could temporise no longer. He at once communicated with the King, stating that either he or the Chancellor must resign. The King could not long hesitate when the alternative was once fairly before him.

Even Thurlow saw this, though he was much chagrined. 'Your Majesty,' he said to the King, 'may soon find another Chancellor, but not another Prime Minister.'

He was nevertheless deeply offended with the King, whose interests he believed he had uniformly consulted, and whose conduct appeared to his somewhat jealous nature tinged with ingratitude.

Thurlow, under a proud and haughty manner, concealed a peculiarly sensitive heart.

At this very time he was in the deepest affliction at

the elopement of his daughter; his letters to Lord Kenyon show how completely unmanned he was by the occurrence. George the Third perceived the true nature of his character better than either his contemporaries or his biographers. He spoke of him as a man of considerable feeling, in whose eyes he had often seen the tears.[1] His old friend Cowper records a fact, which is a pleasing corroboration of the King's judgment. 'I know well,' he writes, 'the Chancellor's benevolence of heart, and how much he is misunderstood by the world. When he was young he would do the kindest things, and at an expense to himself which at that time he could ill afford, and he would do them, too, in the most secret manner. I know not what is become of her now; but in those days there was a certain Miss Christian, the daughter, if I mistake not, of a Norfolk clergyman, who had been a friend of Thurlow's father. The girl was left penniless, and he established her in Tavistock Street as a milliner, disbursing three hundred pounds to furnish a shop for her. I went with him to the house, and, having seen her, am ready to swear that his motives were not, nor could be, of the amorous kind, for she was ugly to a wonder. No creature, I believe, knew anything of the *truly Christian* intrigue but myself only. When I think on those things, and hear them spoken of, as I sometimes do,

Væ meum
Fervens difficile bile tumet jecur.

Many a time I have fought his battles, and some I have convinced of their error.'[2]

[1] Nicholls' Recollections.

[2] Southey's Life of Cowper, vol. vii. pp. 128, 129.

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Another curious illustration of the real kindness of Thurlow's character may, perhaps, be fittingly introduced here.

The poet Cowper, who had been an early friend of the Chancellor's, was afflicted in later life with a profound melancholy. This was mentioned to Lord Thurlow by Hayley, and was the origin of the following correspondence, which has already appeared in Southey's Life of Cowper.

The transaction is thus there alluded to :—

'Hayley has taken no merit to himself for the curious plan which he had brought to bear. His part in it is explained by the two following letters from Lord Thurlow to Lord Kenyon : they are characteristic of their writer, and *of that kindness which his rough exterior concealed from those only who did not know him well.*'

Lord Thurlow to Lord Kenyon.

'Dulwich, 22nd Novbr. 1797.

'My dear Lord,—I have been pressed by one mad poet to ask of you for another a favour, which savours of the malady of both. I have waited for an opportunity of doing it verbally, but this gout at this time of the year makes it uncertain when I can see you.

'Cowper's distemper persuades him that he is unmeritable and unacceptable to God. This persuasion Hayley thinks might be refuted by the testimony of pious men to the service which his works have done to religion and morals. He has therefore set on foot a canvas, by the favour of Mr. George Rose, to obtain the testimonia insignium virorum to these services, by which means he very reasonably hopes to obtain the

signature of the King, the Bishops, the Judges, and other great and religious men, who may happen to be found within the same vortex; but he doubts whether one of the chiefs is exactly within the range of that impulse, and. knowing your goodness to me he has urged me to prefer his request. In charity to him I have consented, and if you think it an act of real charity to the other, I know you will do it. Cowper's worth and talents I was formerly well acquainted with. The latter are still better known to the world by his writings, which are certainly filled with animated and impressive pictures of religion and virtue, and deserve every testimonial of his having done them essential service. Laudari a laudatis viris must give him pleasure, if his disease will admit of it; and if the effect of it in removing the malady may be doubted, the experiment seems harmless, at least, and charitable.

'Yours, &c.

'T——.'

Lord Thurlow to Lord Kenyon.

'My dear Lord,—If I find myself at a loss to write about nothing, you, whose mind is much more seriously employed, are scarcely better off. It occurs to me that the young and active imaginations of Lloyd or George[1] would outstrip us both. But to give an outline of the sort of letter which I suppose to be required, I have sketched the following:—

'"Sir,—If I must confess that this step is unusual, I must lament that the occasion is no less so.

'"When inferiour talents are so often misused to

[1] Lord Kenyon's sons.

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excite light and petulant thoughts upon subjects the most sacred, superiour talents employed to excite a due reverence for them naturally engage the gratitude of those who partake of the same zeal. Your animated and impressive expressions of piety have fairly earned the applauses of the good, by serving effectually the cause of religion. If it be thought too presuming in a creature to claim merit with his Creator, the humblest mind may hope that his dutiful endeavours will be accepted there. The tribute of my attestation, though not flattering to the *poet*, may yet gratify the *Christian*, by the assurance that he has been successful in the service of our God. This is my motive, which probably will reconcile, to a mind so candid as yours, the occasion I have taken to avow the esteem with which

'"I have the honour to be, Sir,

'"Your respectful friend and

'"Most obedient Servant,

'"KENYON."

'The object of the letter proposed, as I collect from Hayley, is to persuade him that he is not rejected. The blunt assurance of this from a stranger, apropos to nothing, must revolt him, if he is not too far gone to be moved by anything. But, insinuated, upon an occasion smoothed over for the purpose, it may perhaps be swallowed. Some care at the same time is due to the appearance which such a letter may have: for though I hope his friends are too discreet to let it be seen by others, yet such an accident is worth looking to.

'Yours, &c.

'T——.'

Endorsement in Lord Kenyon's Handwriting.

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'The subject of this letter of L[d] Thurlow to me is Mr. Cowper, the poet, author of "The Task," &c., who, being in a state of melancholy, had expressed a high opinion of me to his friend Mr. Hayley, the poet, and others, and they thought a letter from me might relieve his melancholy. N.B.—I had no sort of personal acquaintance with him.'

Lord Thurlow's 'black brows' were certainly a terror to some of his acquaintances. More than once Lord Kenyon was solicited to use his influence to propitiate the Chancellor.

The first of the letters which I subjoin is from Mr. Erskine, and the second from Sir Elijah Impey, who had been very intimate with Thurlow before he became Chief Justice in India :—

The Honble. Thomas Erskine to Lord Kenyon.

'February 16, 1790.

'My dear Lord,—I am so much distressed by the recollection of what your lordship was so good as to mention to me this morning, that I shall be particularly obliged by your setting me to rights on the subject.

'I am anxious about it for more reasons than one. In the first place, were the Chancellor perfectly indifferent to me, any inattention or want of personal respect to him would be a gross breach of good manners, for which my birth and station could furnish me with no possible excuse : yet that reflection is the least unpleasant, because his lordship having always honored me with more attention as a member of the

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profession than I have any sort of claim to, and having lately done me the honor to become personally acquainted with me as a gentleman, I must have appeared particularly whimsical and brutal if I had taken that reason to be disrespectful, to say nothing of the folly of the idea that my attention or the want of it could be of any consequence to his lordship. The truth is (and which is notorious to all my friends and acquaintances) that I always have had and have the highest and most marked respect for the Chancellor, founded upon the opinion I entertain of his great title to it, and I was yesterday particularly desirous to make my bow to him in the passage from the House; but seeing his lordship in conversation with somebody, which I did not know to be Serjeant Adair, I check'd myself on a sudden and turned away abruptly for fear of officiously interrupting the Chancellor when speaking to somebody else. The sooner your lordship has the goodness to explain me, the more you will oblige

'Your Lordship's much obliged and

'Faithful humble Servant,

'T. ERSKINE.'

Sir Elijah Impey to Lord Kenyon.

May 6, 1790.

'My Lord,—Fearing that my staying away from my L^d^ Chancellor when I considered the prosecution against me dropt might be thought neglect, I made many attempts, both by letters and personal application, to gain admission to his lordship; my want of success I attributed to my having been too precipitate in considering the prosecution over, and that his

lordship saw reason to think my visits still improper. Your lordship lately honored me with a communication from Lord Thurlow, as I understood, by his express consent, by which I learnt he was surprised I had not waited on him, and had said he no longer saw any impropriety in my attending him; and honored me with the appellation of an old friend.

'Happy that the bar was taken off, I immediately waited on him; was so unfortunate as to find he was abroad. I repeated this twice more, with the same success. I then wrote to request to know when I might wait on him, and, lest my letter might be laid aside and forgot, I ordered my servant not to deliver it except he found his lordship at home. His servant sent mine to West^r^, where he delivered the letter to his lordship, who said he would answer it when he returned to Ormond Street. My servant attended for it, but was ordered to call again the next morning; he attended accordingly; but the Chancellor went to West^r^ without giving any answer. When I had the honor of seeing you yesterday morning, I took the liberty of consulting you on the propriety of my calling on him on my return home at an hour when you thought he would certainly be at home; I went, but was denied admittance. I saw his lordship at the window. I have no reason to think he saw me.

'I can, with great sincerity, say that my desire to renew the intercourse I have been honored with, is not at all influenced by his high rank and patronage; if I know myself, it arises solely from a sense of gratitude and personal affection: at the same time I must confess that the partiality he has shown me was always

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flattering to me in proportion to his situation, and the public estimation of his character; and that I know that under the circumstances in which I have been, and indeed still am, any connection with him must be peculiarly honorable to me; and on the other hand, after having been permitted to be in some habits with him, I feel most sensibly that a total exclusion from his house must impress a general opinion that he has cause to reprobate my conduct and to esteem any intercourse with me to be disgraceful to him. Had I any self-conviction that it ought to be the case, I should have shrunk from any interview with him; had I reason to think it was actually the case, thinking myself (as I always have done) particularly answerable to him for my official conduct, I should have been miserable till I had evinced, to his satisfaction, the uprightness of my actions. After the consolation your lordship has honored me, when I have expressed anxiety on that subject, and after what I have heard from others to whom his lordship's sentiments were known, I will not torment myself with the idea that I stand condemned by his judgment.

'My apprehensions are that something has intervened by which I have unintentionally offended him; your lordship would confer a lasting obligation if you could procure me information whether I have offended him or not, and in what. I have been under very early and great obligations to him. His thinking on me in his contested election for Tamworth, his kindness and assistance to me when Counsel at the Bar and the House of Commons, and his procuring me that situation which gave me my fortune, are obligations

which, in my mind, can never by any means be cancelled or at all diminished. Private habits and friendship, which I have been indulged with, have made that affection which, had I been at a greater distance, could only have been gratitude. These are the causes which have induced me to have recourse to your lordship's mediation.

'I find myself reduced to the most disagreeable dilemma and am puzzled how to act. Should I still press to be admitted I may give offence by my importunity, and the attempt will therefore be vain. If I give it up, his lordship's avocations are such that he will never think more of me, or may forget the cause of it, and think me neglectful, by which I must lose a connexion which forms a great part of the honor and happiness of my life; and submit to the general, but I hope false, impression which must necessarily follow, that tho' I have escaped prosecution, yet the best friend I ever had, and the ablest and most competent judge of my conduct, is so little satisfied with it that he has discarded me with disgrace.

'I have a strong additional reason for wishing to see his lordship before I quit town, for as it is not impossible that the Parliament may be dissolved before I return, and it most certainly will be near its conclusion, I shall be precluded from conferring with him on a subject that my obligations to him require I should consult him about. What I mean is this: I have a seat in Parliament offered to me at a certain price; your lordship knows from what quarter. Totally ignorant as I am of his private political sentiments and connexions, and as no consideration under heaven

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should lead me into a connexion which w^d^ engage me to act with those to whom his lordship does not wish well, I find myself embarrassed until I can lay the whole before him and know whether it meets with his approbation or not.

'If it be his pleasure I should keep from him, or his leisure will not permit my visits, hurt as I shall be by the exclusion, and the appearance resulting from it, it will be an ease to my mind, if I have given offence, to be suffered to send my excuses or to know thro' y^r^ lordship that I have done nothing either in public or private by which I have forfeited his regard. Whatever the event may be, his favors conferred on me cannot be recalled: my obligations therefore must remain the same, and my esteem for his public character and affection for his person will not be the least abated, tho' I may have no opportunity to express the same personally.

'My anxiety has so filled my paper that it w^d^ not allow me to subscribe myself, on the other sheet,

'Y^r^ Lordship's most obliged and

'Most humble Ser^t^,

'E. IMPEY.'

On Lord Thurlow's retirement, the Great Seal was put in commission. Mr. Pitt endeavoured to persuade Lord Kenyon to be the First Commissioner.

'*June* 1*st*, 1792.—With Mr. Pitt about the Great Seal. He asked me if I would accept the office of First Commissioner of the Great Seal on Lord Thurlow's resigning. I told him it was impossible I could take it and perform the duties of my office of Chief Justice

of the King's Bench. He then conversed with me about the proper persons to make Commissioners, and desired he might talk with me again.

'*June* 15*th*.—Parliament prorogued, after which the Chancellor resigned the Great Seal. Eyre, Ashurst, Wilson, Commissioners.'[1]

The Chief Justice presided as Speaker of the House of Lords till the elevation of Lord Loughborough to the Woolsack. Though no longer a constant supporter of the Government, he was frequently consulted by Mr. Pitt on matters of public business, in which his great legal knowledge could be of assistance to the Ministry.

Mr. Pitt to Lord Kenyon.

'Downing Street, June 25th, 1791.

'My dear Lord,—I am very much obliged to your lordship for your friendly suggestion respecting the Jersey Commission, which I have endeavoured to make use of without mentioning your name. The business originated last year at the Council Board, and all the papers respecting it were then communicated to the Chanc^r^, and indeed I thought the draft of the

[1] Diary. I give the subjoined, but the mistake is evident. The writer was a sister of Lady Kenyon's, who lived till the year 1836 :—

Miss A. Kenyon to Lord Kenyon.

(Extract.)

'Febry. 7, 1830.

'As to what you ask me, whether I had ever heard that the Seals had been offered to your honoured father, I certainly did hear, when I was with them in London, that they had been offered to him, and I was present when he said to your mother, "when it was offered to me I declined it, as you know that is not a place for life; the Chief Justice of the King's Bench is, and, on that account, I think, preferable."'

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Commission had been likewise. The gentlemen who were thought of to be joined with Mr. Grant are Mr. Pembridge and Dr. Nicoll.

'I am, with the greatest regard,

'My dear Lord,

'Y^r^ obedient and faithful servant,

'W. PITT.'

A more important subject on which his advice was required has relation to the treatment of the crowd of refugees whom the French Revolution, now commencing, drove to our shores.

The massacres which marked the progress of the Revolution, and the general feeling of insecurity, impelled the more timid or peace-loving citizens to leave their distracted country, and—a sight which has once again been witnessed in our own time—our great towns swarmed with homeless and destitute foreigners. English generosity, which has become proverbial, did its best to relieve the distress. Meanwhile the effect of the "invasion" on the morale of our own countrymen was perceptibly felt. With the exiles came also revolutionary propagandists, who were quickly joined by the disaffected, always ready to welcome the prospect of tumult and disorder.

Societies, with avowedly seditious objects, were formed, and the press teemed with revolutionary utterances.

'They appeared,' says Lord Stanhope, 'to have no other view than the incitement to tumult and sedition. All kings were represented as tyrants, all ministers as venal and corrupt, and all priests as hypocrites: while

every kind of rule and subjection was denounced as slavery.'[1]

As early as February, 1792, Mr. Pitt writes to Lord Kenyon, forwarding the draught of a Bill intended 'to check the dangerous practices which had occasioned so much alarm.'

Much doubt, however, was entertained as to the extent of the power of the Government in dealing with aliens; and during the recess Mr. Dundas opened a correspondence with the Chief Justice on the subject.

Mr. Dundas to Lord Kenyon.

'Whitehall, 12th Sept. 1792.

'My Lord,—I am obliged to trouble your lordship on a subject which becomes every day more interesting, and will require the most serious attention on the part of Government. The situation of France, and particularly the late outrages at Paris, has produced so great an influx of foreigners from that country, as to be in many respects inconvenient.

'The inconvenience, however, to its full extent, has not yet arrived, but certainly will occur if the Duke of Brunswick, with the armies under his command, shall be successful in reaching Paris. The consequence of that event will, in all probability, be to create much panick in those concerned in the late atrocious proceedings, and it may occur to many of them to seek refuge by flight into this country. It will be impossible for his Majesty's servants to look upon that circumstance with indifference, as the residence of so

[1] Life of Pitt, vol. ii. p. 155.

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many persons, dangerous from their principles, and flagitious in their conduct, would be productive of serious alarm to the peace and good order of this country.

'These circumstances will induce me, some day in the course of next week, to summon the attendance of his Majesty's confidential servants to take them under their consideration. I think it will be on Wednesday next. What his Majesty can do by his own prerogative must, in the present moment, be the first object of discussion, and it will be for future consideration to determine how far any Parliamentary provision will be necessary. The subject will probably lead to a reference for the opinion of the Judges. In the meantime, it would be extremely satisfactory to his Majesty's servants to know your general ideas on the subject, and in particular I would wish to know whether there occurs to you any means competent to be exercised by the Executive Government, either for preventing the residence of foreigners in this country, or for calling upon them, under the special circumstances of the moment, to give security for their peaceable and inoffensive conduct.

'In considering the subject, it will of course occur to you to examine how far the provisions of the Habeas Corpus Act are applicable to the case of foreigners under the circumstances to which I have referred.

'Upon the supposition that the success of the Duke of Brunswick is such as to enable him to restore some degree of order and government in that distracted country, it is possible that the punishment of those who have been the chief conductors of the late outrages

and massacres, will form an early object of attention; and in that case, a requisition will probably be made to the Government of this country to deliver up those who have fled from justice, and taken refuge here.

'I wish therefore to direct your attention to consider what legally and properly it becomes this Government to do under such circumstances. I will not disguise from you that my anxiety on this subject is considerably increased by the knowledge which my official duty leads me to collect of the Society which many of the foreigners already in this country frequent, and the seditious and inflammatory language they are accustomed to hold.

'I will make no apology for this intrusion, as I am sure your lordship's regard for the interests of the publick will lead you to participate in the anxiety I entertain on the subject of this letter.

'I have the honour to be, my Lord,

'Your Lordship's most obedient

'Humble servant,

'HENRY DUNDAS.'

The replies, which, it must be confessed, are not very explicit, are preserved in the State Paper Office.

Lord Kenyon to Mr. Dundas.

'Gredington, 14th September, 1792.

'11 o'clock A.M.

'Sir,—The subject of your letter is very nice and delicate, and what I am by no means prepared to decide upon on the sudden.

'My present hasty sentiments are that there is not any power in any body to call upon the parties you

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allude to, to give security for their good behaviour, till they shall have been guilty of some excesses, or given some evidence of an intention to commit something of that kind.

'But upon the best consideration I can give to the Habeas Corpus Act of 31 Car. 2, I think it does not extend to foreigners, situated as these foreigners are, especially in the 12th section—and that, therefore, they may be sent back to their own country. Whatever personal inconvenience I may be put to in leaving this place at the season which is dedicated to my private affairs, yet if the King's service require it I shall think myself bound to obey any summons which you may give. Your letter does not intimate a wish for my setting out for town at present; therefore, I shall wait until further notice. I am, with great respect, Sir,

'Your most obedient and
'Faithful humble servant,
'KENYON.'

The Same to the Same.

'Gredington, 15th September, 1792.

'My dear Sir,—Since I dispatched your messenger, I have searched for such information as the books I have in this place furnish me.

'I find the Statute 32 Henry VIII. cap. 16. makes several regulations; and, in the 9th section, it provides for their being bound in the manner you'll read in the Statute.

'Nothing of that kind has been done of late times; but still it is a subsisting law, and may afford a ground for calling for a recognizance.

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'The 30th chapter of Magna Charta only extends to alien merchants.

'I find nothing more at present, but am desirous to communicate this, tho' perhaps not of much importance, and what may possibly have occurred before.

'I am, with great respect, my dear Sir,

'Your most obedient and

'Faithful humble servant,

'KENYON.'

'Our lawyers seem clear,' writes Lord Grenville, 'and Blackstone expressly asserts that the King may prevent any alien from coming into the kingdom, or remaining there. But this power has been so rarely used, that it may, perhaps, be better to have a Special Act of Parliament applying to this case.'[1]

The Duke of Brunswick's retreat removed the necessity for immediate action, and the question was postponed till the meeting of Parliament. The Government, however, took vigorous measures to quell the seditious spirit which was rife. Orders were given to embody a considerable force of militia; several regiments were quartered near London, in case of a rising; the Bank of England was more effectually guarded. And as soon as Parliament met Ministers announced their intention of bringing in an Alien Bill forthwith, 'laying, for the first time, restrictions and liabilities upon all foreigners in England.'[2]

[1] Buckingham Papers, vol. ii. p. 217.

[2] Lord Stanhope's Life of Pitt, vol. ii. p. 179. Cf. on this subject an interesting letter from the first Lord Liverpool to Lord Eldon, 1802.—Twiss's Life of Lord Eldon, vol. i. p. 409.

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The new year (1793) brought news from Paris which filled the kingdom with horror. On the 21st of January, Louis XVI. had miserably perished on the scaffold.

The effect was almost as deeply felt in England as the execution of her own king some 150 years before.

It showed the intoxicated violence of France's self-elected rulers, and removed the hope to which governors and governed in England had fondly clung, that this country might be spared the horrors of war.

The letters which follow, from various authors, seem to call for no explanation :—

From John Scott, Esq., to Lord Kenyon.

'East London House, 20th June, 1789.

'My Lord,—Having procured a copy of the question which was referred by the Lords for the consideration of the Judges, I have discovered, to my infinite astonishment, that it is drawn up throughout upon false grounds—an error into which their lordships have fallen from giving credit to what fell from one of the managers in Westminster Hall. The inclosed paper is very accurately drawn up by me, from a strict examination of all the documents. I have taken the liberty to send it, and your lordship will at once see that the second error (where the Lords affirm certain facts to be in proof, which have really no existence) is owing to their giving credit to Mr. Burke for having truly stated that question which Mr. Hastings brought

before the Council on the 11th May, 1778. I have the honour to be, with great respect,

'Your Lordship's much obliged

'And faithful servant,

'JOHN SCOTT.'

Lord Milton[1] *to Lord Kenyon.*

'Milton Abbey, July 5th, 1791.

'My Lord,—A late tryal that I have read of in the newspaper gives me occasion of mentioning business which, as a country gentleman always attending much to that line of life, has often presented itself to me as of much consequence, and at present is certainly increased.[2]

'I am not a sportsman, but have always been most thoroughly convinced that they are statesmen as well as sportsmen who framed the Game Laws. They are amongst the ancient as well as the useful laws of our country: those who made them had as much police as diversion in view; whilst some respect was preserved to the gentlemen and man of property whose situation and use in the State absolutely requires it, those are restrained from idleness whose situation for the public advantage, as well as for their own happiness and prosperity, made it necessary that their time should be confined to business.

'In the lower line of life, our country gentlemen know that the moment a farmer commences a sportsman he is in the way of ruin; the instant a labourer

[1] Afterwards fifth Earl Fitzwilliam, ob. 1857.

[2] Something erased.

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becomes a poacher he is undone: his family falls to the parish, himself becomes a thief, then a smuggler, and ends his career in a jail or at the gallows.

'The lord of a manor has the most clear and indisputable right, both by law and equity, to the advantages and privileges belonging to it: he buys his estate and sells it, accordingly a valuable consideration is paid for them; he keeps them at a considerable expense; the game of all sorts, whilst living upon his property, is his, for the term of feræ naturæ, so much and so ill understood, only implies that it is not like a sheep or a cow, whose owner does not lose his property in it when the beast commits a trespass.

'The Republican party has now made the Game Laws the object of their abuse and detestation; in France, the instant they began to overturn the Constitution and level all distinctions, these were the first they pulled down. It therefore seems to me that they should at all times be most respectfully guarded, and most particularly so now when faction and confusion are raging.

'Permit me to tell here a little history, at which I was present, and seemed to carry force with it.

'A gentleman, a neighbour of mine, and who was indeed in every respect one, for he was a scholar, a man of sense, and possessed an ancient property in his family, had one day some company at dinner; a banker from London was of the company; I happened also to dine with him: the conversation turned on game; my friend had been very civil to the London gentleman, gave him leave to shoot, and ordered his gamekeeper to attend him. Still the banker seemed to

think it hard that gentlemen in his situation, who lived so much in London, might not divert themselves and run over everything they pleased, when they came into the country. My friend with great good humour said, "Sir, the poor little hare or partridge we keep to divert ourselves is the little paraphernalia of a country gentleman to keep up our place in the State, create a little respect, and bear with good humour the burthens that are laid upon us, and we do it with great expense, for when our gamekeepers' wages, liveries, and dogs are paid, a partridge or hare is a very dear dish at our tables. Now you town gentlemen abound in a sort of game we poor country gentlemen see little of; we have a few hares but no guineas: so when I next go to town, I will call at your bank and take some, saying that I think it very hard we should not have some too." The banker was much pleased with the little story, and allowed the truth and force of it.

'Much more might be said upon the subject, and the absolute violation there is of law, equity, reason and common good manners, when a person without land and property takes a house near the gentleman who possesses a great deal, merely to insult him and to destroy his property, preserved at a great expense, because he has none of his own. These things I have often thought of saying my opinion upon, to *authority*, before; having frequently remarked the extreme mischief and dislike the too usual mode of the Judges upon the Circuit has occasioned by almost always throwing every difficulty and discouragement in the way of prosecutions on the Game Laws, which has greatly increased the breach of them, been attended

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with many bad consequences and given very great offence to the gentlemen of the country.

'These thoughts at *this time* seem to me to be of such great consequence as to induce me to trouble your lordship with them; perhaps they may concur with yours; for the public good I wish they may; but at all events they can give you no farther trouble than the reading of them, being wrote with that intention only, and therefore I request that this letter may have no answer. I have the honour to be, my Lord,

'Your Lordship's most obedient and

'Most humble servant,

'MILTON.'

From Lord Thurlow to Lord Kenyon.

'December 6th, 1792.

'My dear Lord,—I am shocked with your letter; not from any apprehension from your disease—that seldom proves dangerous—but from your management: like the dog in the fable, you throw away the substance to grasp at the shadow. You omit what you owe to yourself, to your wife, to your family, to your friends. You neglect as much what you owe to the country. If you are of no use to the country, why do you hold the place? If you are, why do you not preserve yourself? Why don't you send another Judge? Upon ordinary occasions he would be equal, upon others competent. I know also that the public opinion would not only be satisfied, but gratified with anything done to preserve your health.

'Yours very sincerely,

'T——.'

The Bishop of St. Davids (Horsley) to Lord Kenyon.[1]

'Bull's Cross, April 24th, 1791.

'My Lord,—I take the liberty to beg your lordship's perusal of a short Bill, which has been drawn upon a principle suggested by me, for the relief of the Scottish Episcopalians. Your lordship knows that these people now pray for the King and Royal Family, and take the oath of allegiance. But many of their clergy scruple the oath of abjuration, as containing a retrospective denial of the right of the abdicated family, which they hold to have been indefeasible, so long as that family subsisted, tho' they now consider it as extinct. For they think the only remaining representative of that family, the Cardinal York, has incapacitated himself by his oaths of submission, as a churchman, to a foreign sovereign. But the particular hardship that they labour under is this: that by the 9th clause of the 19th George II. c. 38., notwithstanding that they were to take the oaths, they would remain subject to the penalties of that Act. The operation of the Bill, which I enclose, will be nothing more than to do away that cruel hardship, and relieve such of them as can persuade themselves to take the oaths, from the penalties which by that Act would still hang over them. It leaves the delicate question of the validity of their orders quite untouched, and in the same state of ambiguity in which it was left by the statutes of Queen Anne.

'The relief it extends to them will be very consider-

[1] Cf. on this subject Skinner's Annals of Scottish Episcopacy.

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able, and whenever the Cardinal York drops, compleat; as the abjuration oath, I apprehend, will be buried in his grave.

'I think they are deserving of the indulgence of Government, as by praying expressly for the King (which they now do) and recognising his title, they have contributed much towards the extinction of Jacobitism in Scotland. I would not wish, however, that any step should be taken without the advice of those whose situation and abilities, like your lordship's, give them a right to be consulted and to direct in matters of this nature.

'I have the honour to be, my Lord,
'With great respect,
'Your Lordship's most obedient
'Faithful servant,
'SAMUEL ST. DAVIDS.'

Peter Whitehall Davies to Lord Kenyon.

'Broughton, December 19th, 1792.

'My Lord,—I take the liberty to trouble your lordship with another letter, in which I have inclosed an assignat, made payable at Bersham Furnace, endorsed Gilbert Gilpin:—I am informed he is the first clerk of Mr. Wilkinson, whose sister married Doc^r Priestly. With what view Mr. Wilkinson circulates assignats is best known to himself. It appears to me that good consequences cannot arise from their being made current, and that very pernicious effects may. Mr. Wilkinson, at his foundry at Bersham (where I am informed he has now a very large number of cannon),

and in his coal and lead mines, employs a considerable body of men. They are regularly paid every Saturday with assignats. The Presbyterian tradesmen receive them in payment for goods, by which intercourse they have frequent opportunities to corrupt the principles of that description of men, by infusing into their minds the pernicious tenets of Paine's Rights of Man, upon whose book I am told public lectures are delivered to a considerable number in the neighbourhood of Wrexham, by a. Methodist. The bad effects of them are too evident in that parish. All this family present their respectful compliments to Lady Kenyon and your Lordship.

'I am, with the utmost respect and gratitude,

'Your Lordship's most obliged and

'Sincere humble servant,

'PETER WHITEHALL DAVIES.'

Note in Lord Kenyon's handwriting.

This letter occasioned the Act of Parl^{t}, passed in January, 1793, for preventing the negotiation of French paper money in England.

CHAPTER X.

Domestic Life of Lord Kenyon—His Sons—Jones of Nayland—Sir Richard Hill—Mr. Wilberforce—Intimacy with George III.—Retirement of Sir Francis Buller—Trial of Warren Hastings—Political Prosecutions—Trial of Reeves.

(1793—1795.)

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BEFORE continuing the narrative, it may be well to take a cursory glance at the domestic life of Lord Kenyon. A successful lawyer's holiday, in these days, is often somewhat circumscribed, but the Chief Justice, who was very rapid in transacting the business, was seldom detained long on his Circuit. He would generally start home the day his sittings were concluded, and the Long Vacation was almost invariably spent at his country house in Wales. At Gredington, where he had enlarged and improved his house, he passed the time with his family in the full enjoyment of well-earned leisure. Accompanied by his sons he would ride about his now extensive estate, and inspect his new acquisitions.

There is still living one old man who can remember him riding somewhat unbroken colts about the lanes. He describes him as a very silent man, in a grey wig. The country was singularly suited for riding excursions. Gredington is situated in the detached portion of Flintshire which goes by the name of the Hundred of Maelor. The house is built on high ground, and overlooks the whole of the beautiful valley of the Dee, from

Llangollen to Chester, with the Welsh mountains in the distance. The country, which is singularly beautiful, is mostly pasture-land, and was in those days, even more than at present, thickly studded with magnificent oak timber.

Lord Kenyon's sons were now growing up to manhood. The two eldest had been entrusted to the care of the well-known scholar, William Jones of Nayland, a man whose sterling character eminently fitted him to be the companion of the young. His care and attention were always gratefully remembered, and Lord Kenyon was able to prove the sincerity of his friendship in a very gratifying way. As years grew upon him, Mr. Jones became less able to perform his duties, and as his means were small he was under some apprehension as to his future. 'Medicine is of little use,' he wrote one day to one of his pupils, 'so long as anxiety is preying on the spirits. . . . I am certainly not in want at this time, but a black cloud hanging over my latter days is an ugly thing, and may have effects worse then fatal.' [1]

The gentleman to whom this letter was addressed, forwarded it through his friend Mr. Kenyon to the Chief Justice, who at once wrote to the Archbishop of Canterbury. The correspondence is so honourable to both, that I shall insert it here entire:—

Lord Kenyon to the Archbishop of Canterbury.

'Gredington, August 30th, 1798.

'My dear Lord,—I hope I shall not incur your displeasure by writing this letter. If I sh[d], I shall be

[1] Extract from a letter from Rev. W. Jones to G. Downing, Esq., Aug. 20, 1798.

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convinced I have acted improperly as well as impertinently; but my present feelings are so much alive I cannot forbear putting pen to paper. The inclosed letter to my son from a young friend of his occasions your Grace this trouble. I send it without his knowing anything of the matter, and without any comment upon it. I think the learned person who is the melancholy subject of it has considerable merit with the Church of England. If by your means the Chancellor or any B^p who has large patronage c^d do something by way of additional preferment for such a man it would not disserve the cause of religion. If I had less profound respect than I have and ought to have for your Grace, you would not have been troubled with this.

I do not by any means write to procure pecuniary help, otherwise than by way of Church preferment. I should feel myself degraded if it could be supposed that I solicited that w^h if wanted I have myself the ability of conferring.

'KENYON.'

The Archbishop of Canterbury[1] *to Lord Kenyon.*

'Worthing, Sept. 5th, 1798.

'My dear Lord,—Your letter with its inclosures respecting Mr. Jones of Nayland has reached me somewhat later on account of my absence from home. I am unwilling therefore to let this day's post return without thanking you, which I do most sincerely, for the communication, painful, very painful as it is to my feelings. If I had it to reproach myself with having neglected that worthy man, they would be intolerable.

[1] Dr. Moore, obiit 1805.

But in truth I have long wished to serve him essentially without having had the means of doing it in his own person. And therefore, on his mentioning to me his only son, a clergyman, about four years ago (as under strait circumstances), I relieved his anxiety at that time by a promise of giving that son a very considerable living, of more than 500*l.* a year, when it should become vacant, the incumbent being then 85 years of age. It is true, the man is yet alive; and I had no idea of such pressure upon Mr. Jones in point of circumstances as it now appears he labours under. I have more to say on this subject when I have the pleasure of seeing your lordship. In the meantime I have the opportunity just now of offering him a little sinecure, with some contingencies, which may happen even at his age to make it desirable, and this circumstance will occasion us to meet, and give me the opportunity of softening, I hope, the present apprehensions which distress him. The above-mentioned living for his son is within distance of one which he now has. The post is departing. I will therefore only add that I will do the best I can for Mr. Jones, and that I shall be silent about the information your lordship has given me. I return your inclosure, and am with the utmost respect,

'My dear Lord,

'Your very faithful servant,

'J. CANTUAR.'

This preferment must have been very gratifying to the aged minister. He did not, unfortunately, live long to enjoy it. He died in the year 1800, in the 75th year of his age.

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It was said of Mr. Jones that he 'was less than a bishop, but greater.' On another occasion, when one of his pupils was present, the discussion turned upon one of his new works: some one hazarded the remark that it was below par. 'No,' replied Will Stevens, 'Jones is never below Parr.'

The following epigram was written by him on the second Lord Kenyon while at Nayland:—

> Sum bonus, sum malus, (? at) si sim modo par mihi semper
> Non melior toto viveret orbe puer.[1]

In his early days Mr. Jones had been very intimate with Lord Bute, and to him he thus pleasantly alludes in one of his letters: 'Lord Bute, when I most wanted help, very nobly offered me the use of any books and instruments I might have occasion for in the course of my philosophical studies. What he once said to me when we were alone, I have reason to remember from the great impression it then made upon me. It was agreed between us that there was no pleasure like that of a studious life. "There was a time," said he, "when I made myself teacher to my children, and followed my studies in the retirement of a remote situation in the north. The day was then too short for me, but since I came forward into public life and public business I have scarcely known one hour of enjoyment." Thought I, If you, who are at the top of the world, find so much dissatisfaction, what reason have I, who am at the bottom of it (ego homuncio), to complain that life is troublesome and favor uncertain?'[2]

[1] This was written out many years afterwards by Lord Kenyon, and is probably inaccurate. Jones's scholarship was undeniable.

[2] Extract from a letter, Jan. 4, 1794.

On leaving Mr. Jones, Lord Kenyon's sons took up their residence at Christ Church, Oxford, where Dr. Cyril Jackson then presided as Dean. He had been tutor to George the Third, and is designated by Mr. Nicholl as 'a man of master mind.' 1793.

The young men were great favourites with Lord Thurlow, who was a frequent visitor at Gredington, where came also Erskine, Bearcroft, Arden, and other legal celebrities.

How genial the surly ex-Chancellor could be when removed from the vexations of official life, was little known outside the circle of his acquaintance.

The following kind letters show the most amiable side of his character:—

Lord Thurlow to Lord Kenyon.

'November 6th, 1791.

'My dear Lord,—I returned yesterday too late for the post, or I should not have delayed a moment to return you and Lady Kenyon my best thanks for your goodness, both to me and the children, whom you sent home delighted with an expedition which, till their arrival in Wales, had not answered so well. I must not forget in what stead Lady Kenyon's providence stood us. The fruit produced such appetites as must have ended very mortifyingly if her excellent pasties had not been calculated to stand that shock; for such inns as we found before our arrival at Birmingham are nowhere else; the fear of starving, and of getting no horses to escape it, almost left us in despair. We travelled with a diligence I have little to

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complain of, and arrived at Stoney Stratford the second night. But I must own I deserve it for neglecting Lady Kenyon's advice and not going by Stafford.

'I am, my dear Lord,

'Your most obliged and affectionate

'Friend and servant,

'THURLOW.'

Lord Thurlow to Lord Kenyon.

'April 3, 1797.

'My dear Lord,—I return you a thousand thanks for your mutton: it did great honour to Wales; but my reverence for that antient country would admit of no increase.

'If this hail, snow, and sleet should terminate in fairer weather, I would endeavour to find you either in London or Marshgate.

'Yours sincerely,

'T——.'

'Lady Kenyon should take more opportunities of making occasional visits to Bath; the waters do best at intervals.'

A very intimate friend of Lord Kenyon's was Sir Richard Hill, M.P. for Shropshire, whose peculiarities have been amusingly caricatured in the Rolliad.

He was, notwithstanding some eccentricities, a most excellent man, and was highly respected by Wilberforce and other celebrities of his day. He had an unfortunate habit of interlarding his speeches in the House of Commons with Scripture quotations, in consequence

of which he obtained, by favour of the Rolliad, the nickname of the Scriptural Killigrew. In the early days of the French Revolution a libellous attack was made upon him by some scribbler, whom he thought it right to prosecute. The case was tried before Lord Kenyon, who took the opportunity of passing a high encomium upon his character.

'When the evidence had been offered,' says the biographer, 'Lord Kenyon observed: "It is much to be lamented that this man should have written such a book, attacking the character of such a man. It is possible, from a long acquaintance, one might think more of a man than he deserves; but to be sure, there never lived upon earth a better man." "A better man I do not know within the circle of human nature."'

The biographer continues thus: 'The reputation, legal acquirements, and high integrity of Lord Kenyon need no commendation here. He had the truest regard for Sir Richard Hill, and greatly enjoyed the pleasure of being his guest. He was remarkable for the plainness of dress and unaffected deportment which often accompany distinguished abilities into the private walks of life. The terms in which he is constantly spoken of by those who remember him at Hawkstone, are such as convey assurance of the same admiration of his straightforward disposition by his social friends, that won him so much esteem and confidence in his exalted station as a judge.'[1]

The following is an extract from one of a great number of letters from Sir Richard Hill:—

[1] Sidney's Life of Sir Richard Hill, p. 427, published in 1839.

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1793.

Sir Richard Hill to Lord Kenyon.

'London, October 9, 1789.

'My dear Lord Kenyon,—Your kind letter has already been upon more circuits than its worthy author has taken since he was made Lord Chief Justice of y^e^ King's Bench, for it has travelled from Hawkstone to Wells, Weymouth and London, at which place I had the honor of receiving it yesterday morning, and very soon after had the additional honor of seeing and conversing with the noble personage who was the subject of it at the drawing-room at S^t^ James'.'

'. . . . Of all the intelligence which this place affords, I am sure I can send you none which will be more agreeable than that I never saw the King *look* better. I must beg to change the expression and to say, *look so well*, and in *all respects* those who are nearest to him assure me that he is so. . . . . His Grace of Dorset *graces* the Lord Steward's white staff very well; and I doubt not that he feels himself much more comfortable at home by the side of his own monarch, than he would at this time by that of the King of France, or even by the side of the *most Christian Queen*.'

At Hawkstone Lord Kenyon frequently met the celebrated Mr. Wilberforce, who was an intimate friend of Sir Richard Hill. Wilberforce, in his journal, alludes to his acquaintance with Lord Kenyon, which seems to have commenced at Bridgewater, where he had gone for the purpose of meeting his friend Edward Eliot.

In this journey, says his biographer, he fell in with Lord Kenyon, and heard him pass sentence upon five convicts, who are all to die—sad but necessary severity. 'Engaged myself hastily to meet him next day at Wells. His condemning sentence serious and pathetic, but not one word of our Saviour or the repentance not to be repented of. 19th.—To Wells. Dined—to meet Kenyon. Glad to find him favourable to penitentiary houses and a less sanguinary system of penal law. Aug. 29th.—Reached Hawkstone. 31st. —Went to dine at Lord Kenyon's, Gredington; a party of his relations and friends—glad to see us—Lord Thurlow coming. Sept. 3rd.—Dined at Sandford, meeting Lord Kenyon and his three sons.' [1]

The most remarkable incident of Lord Kenyon's domestic life was the intimacy which existed between him and the King. George the Third, always good-natured and affable, appears to have often contracted a real affection for the public men who were thrown in contact with him.

His attachment to Lord North is well known, and Lord Thurlow's rough and contradictory nature had not prevented him from enjoying for many years almost a monopoly of the King's affection.

In later times his attachment to Lord Eldon was equally marked.

For Lord Kenyon his Majesty had always professed great esteem. He had expressed himself most kindly when the Chief Justice was first presented to him, and after his illness, in 1789, one of the first persons

[1] Life of W. Wilberforce, by his sons. Second edition. Vol. i. p. 237, 243.

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with whom he desired an interview was Lord Kenyon. But it does not appear that it was till the retirement and consequent alienation of Lord Thurlow, that this esteem ripened into anything like personal regard or affection.

During term time Lord Kenyon often occupied a small house at the Marshgate, abutting on Richmond Park, and here the King would come without any notice and stay for several hours, walking up and down the little garden, chatting with the Chief Justice.

In 1794, he was much interested in the purchase of a property in that neighbourhood for Queen Charlotte, of which he desired Lord Kenyon to be one of the trustees. This was an excuse for frequent visits. The following extracts from the Diary refer to these meetings :—

'*July* 29, 1794.—Marshgate by his Majesty's command. He met me and walked with me in my garden, and conversed upon various subjects, and about his Richmond property.

'*March* 9, 1795.—To town, in consequence of a letter I had from the King about Ireland.

'*March* 11.—Sent an answer. The King most gracious to me and the Attorney-General at the King's Levee.

'*January* 17, 1796.—With the King at the Queen's House, by his command. He expressed himself most kindly to me and my family. Had much confidential conversation with him.

'*January* 21.—With the King (by his command) at the Queen's House, about his Richmond business. He was pleased to say that Sir M. Hale, Lord Holt

and Lord Mansfield were great men and good men, but he would rather have Lord Kenyon than them all.

'*March* 11.—The King called upon me at Marshgate. Walked with me for an hour, and conversed with me most graciously and confidentially about public affairs, and men, and on private business.

'*March* 7, 1798.—The Duke of Clarence paid me a long visit.

'*March* 23, 1799.—The King, with the Duke of Clarence and Prince Edward, called on me, and walked with me in my garden for half an hour. The King said he came to pay me his Easter visit.'

'*March* 15, 1800.—The King called on me at Marshgate, and took me a long walk with him and the Duke of Cumberland, to show me the place where he meant to build his new house at Kew.'[1]

'Your father,' writes Lady Kenyon after one of these meetings, 'has been twice with the King this week at the Queen's house, by his own command, on private business, and your father came home with tears of gratitude in his eyes for the kind confidence and interest he takes in his private happiness.

'After talking of his own business, he asked your father how you two[2] went on at College, hoped he was happy in his children, and hoped he would bring his second son up to his own profession: indeed he said both, but your father said his Majesty's bounty to him had put the eldest in a situation above the bar.'

During the year 1794, Lord Kenyon lost the services of his ablest coadjutor in the King's Bench. Oppressed

[1] Diary. [2] Her sons.

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with gout and increasing infirmities, Sir Francis Buller sought the repose of the Common Pleas. In a kindly letter he announces his intention to his Chief:—

Sir Francis Buller to Lord Kenyon.

'Salisbury, March 11, 1794.

'My dear Lord,—I have now gone through one-third part of my Circuit, and if I were asked whether I was better or worse than when I left London, I do not know how to answer the question. I incline to think I am better, but have still so many complaints about me, that the die may turn either way, and to say the truth, I do not feel it of much importance which turn it does take. As soon as the Circuit is finished I shall endeavour to get a little rest and quiet, and take some Bath water if my doctors advise it; but quiet and horse exercise seem to me to be the most likely to prove efficacious, if anything can do real service. That the leisure of the Common Pleas will fully admit of; and therefore, though I shall quit your Court with great reluctance, I must try the effect of the other; for though I have been a Judge sixteen years, I dare not yet ask the *Rude donatum*, and I cannot live without it. If I get through the summer well, it may set me up for six or seven years longer; but if not, I shall hardly sit in the Common Pleas for a greater length of time than Yates did.

'I congratulate you on the successor which the Chancellor has found for me. He is a very sensible man, a good lawyer, and I am sure will be a useful assistant.

'At Winchester I had a very heavy gaol, expect the

same at Exeter, and am threatened with a great number of long and tedious causes at Taunton; but that being the last place, I shall not hurry myself.

'With every sincere wish for your health and happiness, I am, with great truth and regard,

'My dear Lord,

'Your very faithful and obedient servant,

'F. BULLER.'[1]

Sir Francis was succeeded by Mr. Justice Lawrence.

The illness of Lord Loughborough during the early part of this year, threw upon Lord Kenyon the further duty of presiding in the House of Lords; and as the interminable trial of Warren Hastings was still proceeding, he was obliged to give his services there also.

The extraordinary length to which this celebrated trial had been protracted had rendered people completely careless of the result. Lord Kenyon had presided for some weeks during Lord Thurlow's illness in 1791, and had then strenuously endeavoured to bring it to a close. The promptitude of his decision was here shown in rather a remarkable manner. It is thus alluded to by Adolphus:—

'Sir James Erskine St. Clair undertook the examination of evidence. It occupied three days, and as usual gave rise to many arguments; but the points were decided by Lord Kenyon, who sat for the Chancellor, and *the Peers did not once retire to their own chamber.*'[2]

[1] I cannot help referring the reader of this letter to Lord Campbell, where he will notice the impression there given of this transaction.—Lives of the Chief Justices, vol. ii. p. 550. 1st edition, 1849.

[2] Adolphus, vol. vi. p. 169.

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Again, in 1794, Lord Kenyon used his best efforts to close the trial, by refusing to hear irrelevant evidence, and by the rapidity with which he decided the legal questions which constantly arose.

'Mr. Burke proposed to give evidence of the causes, conduct, and conclusion of the Mahratta War, in which, he alleged, Mr. Hastings carried on all the negotiations with a perfidy unexampled in history, and which he concluded with a peace of unprecedented ignominy.

'In answer to a question from Lord Kenyon, he admitted that the evidence was not applicable to any part of the charge; it was a reply to evidence given to the defendant; but on the clearest principles it was rejected by the whole House. Had they decided otherwise, it is impossible to divine the length to which the trial would have been protracted; for the matter extended over a period of eight years, and the evidence relating to it filled six folio volumes.

'This determination irritated Mr. Burke to the highest pitch. . . . . .

'In vain did Lord Kenyon and several other Peers entreat him to address himself to the business, in vain did Lord Thurlow inform him that they could not investigate a complaint of libel; he persevered in defiance of all remonstrance, and finally tendered a written protest, desiring that it might be entered on the journals; but Lord Kenyon declared that it could not be received.'[1]

The hardship of this policy of procrastination on Hastings was unspeakable. How deeply he himself felt it may be gathered from the following:—

[1] Adolphus, vol. vi. p. 202.

Warren Hastings, Esq., to Lord Kenyon.

1794.

'Westminster Hall, 27th May, 1794.

'My Lord,—I have been within a few hours since informed that Mr. Burke intends to solicit the Lords to adjourn my trial over to another year, for the purpose of affording him time to prepare his concluding reply. This is an occasion in which I think myself justified in praying even one of my own judges to interpose his authority and influence to repell so gross and atrocious a wrong: and I do most earnestly beseech your lordship to give your attendance and to afford me your good offices for this end. I have the honor to be, with the greatest respect, my Lord, your Lordship's most obedient and most humble servant,

'WARREN HASTINGS.'

'It is surely too hard,' writes Lord Thurlow,[1] 'this politico-judicial business should interrupt the more serious administration of justice.'

At length, on the 23rd of April, 1795, judgment was given in Hastings's favour.

The war with France induced Mr. Pitt to adopt a policy of coercion in this country which could only be justified by its necessity. More especially it was thought wise to take vigorous measures to restrain the licence of the press. The favour with which the early stages of the French Revolution had been regarded by a large party in the country soon changed into alarm, when it appeared how powerless was the party of order in France to moderate its violence. This revulsion of

[1] To Lord Kenyon.

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feeling was intensified by the courageous conduct of Mr. Burke, who then threw his powerful influence into the scale of order. The disinterestedness of his motives was clearly evidenced, when, in a scene which few can have witnessed without emotion, he on public grounds severed his long friendship with Fox and his party. The reason for this step was afterwards given to the world in the celebrated pamphlet entitled 'Reflections on the Revolution.'

The effect of this extraordinary work was prodigious. It is possible, said Etienne Dumont, that the Essay of Burke may have been the salvation of Europe.[1]

Even those of his quondam allies who could not forgive his defection, joined in admiration of the noble sentiments and magnificent language it contained.

'I have left you Burke's pamphlet,' writes Mr. Erskine to Lord Kenyon, 'which, tho' perfidious to his friends by imputing sentiments to them which they never held, in order to disgrace them, has yet in it some very splendid passages.'

The adhesion of Burke to the Government in fact marked the change of public opinion. In future the revolutionary party was supported only by the few disaffected, who are opposed to all restraint. However politicians might differ as to the wisdom of the Government measures, there was an overwhelming preponderance of feeling in favour of such a repressive policy as should secure the country from the experience of the scenes which had been witnessed in France.

It was in accordance, therefore, with public opinion,

[1] Quoted by Lord Stanhope, Life of Pitt, vol. ii. p. 71.

that the Ministers took legal proceedings against the publishers of revolutionary sentiments.

To us, who read every day of professed republicans stalking about the country propagating their opinions with impunity, some of the accused of 1794 will appear to be hardly treated. But it is yet to be proved how far a country can allow the reins of Government to be relaxed without paying the natural punishment of riot and revolution.

Two debtors in the Fleet Prison were first charged with conspiring and agreeing to escape out of the Fleet, and with exciting others to follow their example by the publication of seditious libels.

The publication more particularly complained of was the following:—

'This house to let. Peaceable possession will be given by the present tenants on or before the 1st day of January, 1793, being the commencement of the first year of liberty of Great Britain. The republic of France having rooted out despotism, their glorious example and success against tyrants render infamous bastiles no longer necessary in Europe.'

The recent storming of the Bastile gave a signification to this foolish publication, which it would not otherwise have borne.

The defendants were found guilty, and sentenced to stand in the pillory for an hour opposite the Royal Exchange.

The next offender who was put upon his trial was the celebrated Tom Paine, author of 'The Rights of Man.' He was defended by Erskine, who in a masterly speech endeavoured, though unsuccessfully, to persuade

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the jury that not only was the work no libel, but that it asserted doctrines which every man in a free country had a right to assert.

Declaring himself cordially attached to the principles of the Constitution, he maintained that it was a right which every man enjoyed, not intending to mislead, but seeking to enlighten others with that which his own reason and conscience, however erroneously, had dictated to him, to address himself to the collective reason of the nation, with the object of pointing out errors and removing defects in their institutions.

The jury turned a deaf ear to his eloquence, and refusing even to hear the Attorney-General in reply, at once brought in a verdict of guilty.

On the trial of W. Frost, who was struck off the rolls of the Court and sentenced to stand in the pillory for using seditious and inflammatory language, Lord Kenyon thus alluded to the state of public affairs :—

'How far the armies that entered the Kingdom of France did right; how far a number of gentlemen at the Thatched House Tavern did right; whether what they did was the result of wisdom, or the result of faction and folly, it is not for us to decide. We are not here to enter into the merits of any particular class of great men in the country, nor am I prepared, because my duty does not call upon me, and if it did, I am afraid my abilities would fail, to read you a lecture upon Government: it is enough in this country that we enjoy those blessings which the Government of the country gives us: whether they are the best or not the best, every man will judge for himself. Those who find that their liberty and their property, and every-

thing dear to them, are defended by the even hand of impartial law, will congratulate themselves that they live in that country, and if they find that neither the history of former times, nor the present eventful times, produce any greater blessings than their own, they would feel it with gratitude under the providence of God, and endeavour to enjoy it with thankfulness.'

The following year the publishers of the *Morning Chronicle* were tried for a seditious libel.

The trial was remarkable as being the first prosecution for libel under the new law. It resulted in an acquittal. The bearing of the new law does not seem to have been thoroughly understood, and the jury, to escape from the difficulty, in the first instance returned an imperfect verdict—'Guilty of publishing, but with no malicious intent'—and it was not till the Chief Justice refused to receive this, that they agreed to a verdict of Not guilty. Lord Campbell has bestowed a vast amount of indignation upon Lord Kenyon for his summing up in this trial; declaring that in it he 'perverted and misconstrued' the law, by expressing his own opinion on the question of the libel. He appears, however, to have been misled by his animus against his predecessor. A careful perusal of the Act will convince any impartial reader that its intention was that the judge should state his opinion on the merits of the case. The jury were afterwards free to disregard the opinion expressed, and to return a verdict on the whole matter, instead of on the mere question of publication as of old.

Lord Campbell, however, confesses that this reading

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of the law was followed for nearly fifty years afterwards.

'The Libel Bill,' says Mr. Howell, 'does not confer upon the jury any jurisdiction over the law, inconsistent with the general principle of the Constitution; but considering that the question of libel or no libel is frequently a question of fact rather than of law, and in many cases of fact and law almost inseparably blended together, *it directs the judge*, as in other cases, *to deliver his opinion to the jury upon the whole matter, including, of course, the question of libel or no libel*, leaving them at the same time to found their verdicts upon such whole matter, so brought before them, as in all other criminal cases.'[1]

I think the following summing-up will be found in strict accordance with the principle here laid down:—

(Extract).

. . . . . .

'The liberty of the press has always been, and justly been, a favourite topic with Englishmen. They have looked at it with jealousy, whenever it has been invaded; and though a licenser was put over the press and was suffered to exist for some years after the coming of William, and after the Revolution, yet the reluctant spirit of English liberty called for a repeal of that law; and from that time to this it has not been shackled and limited more than it ought to be.

'Gentlemen, it is placed as the sentinel to alarm us when any attempt is made on our liberties, and we

[1] Note on Mr. Fox's Libel Bill, vol. xxix. p. 553, Parl. History.

ought to be watchful, and to take care that the sentinel is not abused and converted into a traitor.

. . . . . .

'The merits or demerits of the late law respecting libels I shall not enter into. It is enough for me that it is the law of the land, which by my oath I am bound to give effect to, and it commands me to state to juries what my opinion is respecting this or any other paper brought into judgment before them.

'In forming my opinion on this paper, or on any other, before I arrive at a positive decision on that point, I would look about and see what the times were when the publication took place.

. . . . . .

'Gentlemen, you will recollect the appearance of public affairs, and the feelings of every mind in the country at the time that Parliament met, and for some time after.

'I do not know whether I color the picture right, when I say very gloomy sensations had pervaded the whole country.

'It is for you to say whether there were not emissaries from a neighbouring country making their way as well as they could in this country. It is for you to say, looking at the great anarchy and confusion of France, whether they did not wish to agitate the minds of all orders of men in all countries, and to plant their tree of liberty in every kingdom in Europe. It is for you to say whether their intention was not to eradicate every kind of government that was not sympathetic with their own.

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'Weighing thus all the circumstances; . . . believing also that there were emissaries from France, wishing to spread the maxims prevalent in that country in this—believing that the minds of the people of this country were much agitated by these political topics, of which the mass of the population never can form a true judgment—and reading this paper, which appears to be calculated to put the people in a state of discontent with everything done in this country, I am bound on my oath to answer that *I think this paper was published with a wicked, malicious intent to vilify the Government, and to make the people discontented with the Constitution under which they live. That is the matter charged in the information—that it was done with a view to vilify the Constitution, the laws, and the Government of this country, and to infuse into the minds of his Majesty's subjects a belief that they were oppressed, and on this ground I consider it as a gross and seditious libel.*[1] *This is the question put to you to decide.*'[2]

Thus far the Government had been sufficiently, if not uniformly successful in securing convictions, a result which they owed partly to the temperate conduct of the prosecutions by the Attorney-General, and partly to the impartiality of the presiding Judge. It has been imputed to Lord Chief Justice Kenyon that he not only often attempted to bias the jury in criminal cases, but that he indulged in violent displays of temper when on the Bench.

There is no evidence whatever to support either charge in these prosecutions. His charges are always

[1] These are the words complained of by Lord Campbell.

[2] State Trials, vol. xxii. pp. 1016, 1018.

temperate and impartial, if not always equally eloquent and impressive.

Encouraged by their success, the Ministry resolved in the ensuing year to institute proceedings for high treason against some of the numerous writers who still preached the doctrines of the French Revolution.

Hardy, Horne Tooke, and others were tried by a special commission, before Chief Justice Eyre. This prosecution, as is well known, entirely broke down, the Government failing to secure a single conviction. The result appears conclusive against their policy—if they decided to prosecute they should have made as certain as possible of convictions. Doubtless the pressure put upon them by well-intentioned supporters made their choice a difficult one—but it may be doubted whether the evidence adduced against the prisoners could ever have borne the construction of *treason;* and the ends of justice would have been equally served by a few successful prosecutions for misdemeanor or seditious practices.

As it was, a feeling of triumph was evoked by the break-down, which only added fuel to the flame. On the last night of the trials, bonfires were lighted in the streets, and the successful advocates, Erskine and Gibbs, were drawn home by the excited populace amid the loudest acclamations.

It is said that the patriots were so occupied with their triumph that they forgot to return the horses which they had removed. [1]

On the subject of State Prosecutions is the following

[1] Cf. Stanhope's Life of Pitt, vol. ii. p. 272. Twiss's Life of Lord Eldon, vol. i. p. 269. Adolphus, vol. vi. p. 77.

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from Sir John Mitford, afterwards the first Lord Redesdale, to Lord Kenyon, which, though it in fact belongs to a later date, seems more appropriate to the time of which we are treating:—

'Lincoln's Inn, Febry. 5, 1801.

'My Lord.—I am honoured with your lordship's letter, inclosing the petition and letter. The newspaper which your lordship has also sent me, I shall take the liberty of shewing to the Solicitor-General.

'In these cases I have generally followed the rule Lord Eldon adopted for his conduct, to notice as much as possible those cases only which did not personally involve his Majesty's Ministers: conceiving that there was a much greater chance of success in prosecuting for libels aimed personally at his Majesty, or against the Constitution in Church or State, than where Ministers were directly the objects of the libel. The many cases in which juries have shewn an indisposition to notice personal attacks on Ministers have induced Lord Eldon and me to think that this forbearance was on the whole prudent.

'We have had during the last seven years many a painful moment in the consideration of these subjects, many more, not only than the world will give us credit for, but than even your lordship can, from any view of the cases which have come under your eye, conceive. I think the press on the whole has become more decent, and I flatter myself, that the very temperate exercise of the office of Attorney-General, whilst Lord Eldon held it, and since it has been in one who has carefully followed his steps, has had an effect in producing a

general persuasion that the powers of that office have never been used but where the case manifestly demanded that they should be put in force. I have ventured to trouble your lordship so long on this subject, and to throw my sentiments so openly before you, because every man must feel, that many, many very abominable libels have passed without animadversion.

'I have the honor to be

'Y^r Lordship's very obedient humble servant,

'J. MITFORD.'

Failing in their attempt to repress the spirit of disaffection by prosecutions, the Government was compelled to fall back on the enactment of new coercive laws.

In 1795 the Habeas Corpus Act was again suspended, and the Attorney-General was ordered to bring in a Bill 'for the better protection of Monarchy and the Monarch.'

Some such Act, methinks, might not be altogether inappropriate at the present time.

The Bills were entitled the 'Treasonable Attempts and Seditious Meetings Bills.'

The latter, which forbids the assembling together of more than fifty persons for the purpose of petitioning or deliberating upon grievances, except under certain conditions, passed the House of Commons after considerable opposition. In the House of Lords it was warmly opposed by Lords Derby and Moira, and by Lord Lansdowne.

Lord Thurlow and Lord Kenyon joined the ranks of the opposition.

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A paramount necessity alone can justify the Government policy in thus removing for a time one of the dearest liberties of the subject; and in any opposition to such measures the opponents always must occupy the vantage-ground. But the danger, there can be no question, was great, and in the opinion of many imminent, and the best justification of their policy is the general satisfaction with which these restrictions were acquiesced in.

It was during the discussions on these bills that Mr. Reeves published the unfortunate pamphlet in support of the Government, for which he was afterwards put upon his trial.

He had previously founded an association against republicans and levellers; was a magistrate for Middlesex, and honestly wished to support the Government against the Jacobin spirit then rife.

His zeal in this good cause led him to publish a pamphlet, entitled, 'Thoughts on the English Government.' The book, though it contained plenty of foolish assertions, would in all probability have been suffered to remain in the printer's hands, had it not been for the acrimonious spirit which had been roused by the passing of the 'Treasonable Practices Acts.' The ministerial success in carrying these through Parliament brought down the wrath of the Opposition on the first scapegoat they could find. It must be acknowledged, however, that they chose their battle-ground well. The passage complained of was really worthy of the worst days of Personal Government. It ran as follows:—

'With the exception of the advice and consent of the two Houses of Parliament, and the interposition of

juries, the Government, and the administration of it, in all its parts, may be said to rest wholly and solely on the King, and those appointed by him: those two adjuncts of Parliament and juries are subsidiary and occasional; but the King's power is a substantive one, always visible and active. By his officers and in his name, everything is transacted that relates to the peace of the realm and the protection of the subject.

'The subject feels this, and acknowledges with thankfulness a superintending sovereignty, which alone is congenial with the sentiments and temper of Englishmen. In fine, the Government of England is a Monarchy; the Monarch is the ancient stock from which have sprung those goodly branches of the legislature, the Lords and Commons, that at the same time give ornament to the tree and afford shelter to those who seek protection under it. But these are still only branches, and derive their origin and their nutriment from their common parent; they may be lopped off and the tree is a tree still; shorn indeed of its honours, but not, like them, cast into the fire.

'The Kingly Government may go on, in all its functions, without Lords or Commons; it has heretofore done so for years together, and in our times it does so, during every recess of Parliament, but without the King, his Parliament is no more. The King, therefore, alone it is who necessarily subsists without change or diminution, and from him alone we unceasingly derive the protection of law and government.'

It was not likely that Mr. Fox and Mr. Erskine would tamely submit to acknowledge the House of Commons a mere adjunct of the monarchy.

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The matter was brought before the House of Commons by Mr. Sturt, who moved that the author of the pamphlet should be prosecuted by the Attorney-General for a libel on the Constitution.

The Ministers, unable to justify the assertions in the passage quoted above, thought it wiser to acquiesce in a motion proposed by Mr. Sheridan, which affirmed the pamphlet to be a scandalous and seditious libel, and a high breach of privilege. It is said that Burke expostulated with Pitt for thus abandoning his friends.

'They should be more discreet,' said the Prime Minister. 'If,' rejoined Burke, 'every indiscretion were to cause abandonment, there would be plenty of discretion, but no zeal.'

The prosecution was voted, and the case was tried before Lord Kenyon at the Guildhall, on the 20th of May, 1796.

The Attorney-General (Sir John Scott) opened the case in a 'luminous, learned, and manly speech.'[1]

He was particularly happy in his comments on the offensive passage—

'I hope and trust,' he said, 'that as far as I understand the Constitution and the Government of my country, I am as much wedded to them as any man whom I have the honor to address. On the one hand, I will to the last hour of my existence resist the efforts of those principles of anarchy which have a direct tendency to overthrow the Government of this country, as established on a duly attempered Constitution of King, Lords, and Commons. . . On the other hand, gentlemen, not suspected, I believe, of the want of a

[1] Adolphus, vol. vi. p. 385.

due loyal and constitutional attachment to the Sovereign of my country, I say here distinctly that if that duly attempered Constitution should cease to exist, if what are here called the branches of the tree (the King), the Lords and Commons—should be lopped off and thrown into the fire, the tree may be a tree,—the King may be a King—but the King will not be a *British King.*'

The prisoner was defended by Mr. Plumer, afterwards Master of the Rolls. The Lord Chief Justice, says Adolphus, summed up the case 'with great candour and impartiality.'

After acknowledging the ability displayed by the Attorney-General in his dissertation on the Constitution, he thus comments on the right of free discussion which the subject enjoys :—

'The power of free discussion is certainly the right of all the subjects of the country. We owe more to it than to almost any other right which the citizens of this country have exerted—I believe it is not laying in too much claim on the behalf of free and temperate discussion, to say that we owe to it the Reformation, and that we owed to it the Revolution. The discussion which was made by Luther, Melancthon, and the other persons who preceded the Reformation, opened the eyes of the public, and they got rid of the delusions which had been spread by the Pope of Rome, and emancipated mankind from the spiritual tyranny they were under, and brought about the establishment of that religion which we now enjoy in this country.

'It had the same good effects upon the Revolution—if there are, now and then, little excrescences or some

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little film upon the eye, it is better to endeavour to wipe them off tenderly and carefully then to extinguish them violently.[1] Therefore in discussions of this kind, although licentiousness ought beyond all controversy to be restrained, fair discussion ought not to be too hardly pressed upon. . . . . .

'Gentlemen, with these observations I shall beg leave to state to you, what it is which Mr. Attorney-General very candidly states to you, you must be convinced of in order to find the defendant guilty—the quo-animo with which the publication was made by the party. The quo-animo which the prosecution imputes to him is this—that he, by this publication, intended to raise and excite jealousies and divisions among the liege subjects of our lord the King, and to alienate their affections from the Government by King, Lords, and Commons, now duly and happily established by law in this country, and to destroy and subvert the true principles of the free Constitution of the Government of the realm. . . .

'That is the quo-animo which is imputed to this person; and when you proceed to discuss and to decide upon this point, you are to find whether your consciences are satisfied that these were the motives which influenced him in the publication. . . . . .

'I have not read through the whole of this pamphlet so as to have brought my mind to a decision upon the point: it is not to be my decision but yours. If I were bound to decide it, if the verdict were to be my verdict, and not yours, I should take the charge with me, I

[1] This is a curious example of the mixed metaphors often used by the Chief Justice.

should examine the charge, I should take the pamphlet with me, I should examine the pamphlet, and I should see, with every fair leaning to the side of lenity and compassion, whether I thought the party was guilty or not.'

The jury consulted for upwards of an hour; when they returned into Court, the foreman said:—

'My lord, the jury are of opinion that the pamphlet which has been proved to have been written by John Reeves, Esq., is a very improper publication; but being of opinion that his motives were not such as laid in the information, find him not guilty.' It is said that the qualifying words were introduced, owing to the obstinacy of one juryman, who, actuated by party feelings or personal dislike, would not agree with the other eleven in a mere verdict of 'not guilty.' [1]

If this is true, it was more the result of accident than forethought that the jury arrived at a verdict which seems to express the opinion of any impartial reader of the trial at the present day.

The following seems to refer to some embryo scheme of Legal Reform:—

From Lord Loughborough to Lord Kenyon.

'My dear Lord,—I think the project you sent to me this morning will not answer L^d H^'s intention. The business of a C^t of Chancery cannot be well executed by a rotation of Judges, but both the expense and the delay will be increased by it, not to mention the mischief of a variety of opinions that probably will take place. In every innovation there is a chance of the

[1] State Trials, vol. xxvi. p. 530 *et sqq.*

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publick being dissatisfied: that dissatisfaction will in this case bear ag^t the Judges, and with some considerable degree of obloquy. There is besides a great inconvenience in making so strong a difference between the Sen^r and Junior Judge on the same Circuit, and also in making one Circuit much more advantageous than the others. In short, I have so little relish for the project, that I never would take the appointment for myself, tho' I mean to go that Circuit. These are my private thoughts on the subject. If it strikes you and the Ch. B. in the same manner, perhaps you would think the communication should go no further.

'I ever am, my dear L^d,

'Y^r's

'L.'

CHAPTER XI.

Correspondence between George III. and Lord Kenyon on the Coronation Oath—Scarcity of Corn Harvest—Flintshire Election.

(1795—1796.)

1795.

THE intimacy of the King with Lord Kenyon occasioned a reference to the latter, which has since become historical.

The condition of the Roman Catholics had for some years been prominently before the country: as early as 1792, Mr. Burke, in a letter to Sir Hercules Langrishe, had advocated their claims, and some considerable relief had been granted them by the legislature in 1792–1793.

But Catholic Ireland was not satisfied with the mere semblance of religious liberty. They demanded admission to the same rights and privileges which their Protestant brethren enjoyed.

To us who know the course which events afterwards took, who read of the successive Governments which the Catholic question overthrew, and the violent agitation of the public mind which it occasioned, it will appear strange to find how near the Catholics were to the attainment of their objects in 1795.

Thoughtful men were hopeful that a few years at most would see a system of justice and equality established throughout the three Kingdoms.

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The precipitancy of an earnest but injudicious man marred the fair prospect, and postponed a measure of undoubted justice for nearly half a century. To this day the sister island is suffering from the results of an ill-judged precipitation.

It has been usual to attribute to George the Third the entire odium arising from the delay of Catholic Emancipation. It is true that in 1801 and 1807, it was his insurmountable repugnance to their claims which caused the disappointment of the Catholics. But it was during the period which followed Lord Fitzwilliam's recall that that repugnance was rendered insurmountable by the intrigues of the Irish Protestants and their English allies. The King, as is evident from his letter of February the 5th, 1795, [1] was taken completely by surprise at Lord Fitzwilliam's conduct. The Ministry at that time were certainly not unfavourable to some considerable reduction of the disabilities. 'It may be doubted,' says Lord Stanhope, 'whether any one single member of the Cabinet was at this time hostile to the measure on its merits.' [2]

What the result might have been if the Ministry had been permitted to proceed with caution, it is impossible now to say. But it is evident that at the date of George the Third's correspondence with Lord Kenyon, which I am about to quote, his principal, if not only objection to the measure, was his fear of breaking his Coronation Oath, and this idea was instilled into his mind by Lords Clare and Loughborough. He was peculiarly susceptible to anything which reflected, or might seem to the

[1] Lord Stanhope's Life of Pitt, vol. ii. Appendix, p. xxiii.
[2] *Ib.* vol. ii. p. 302.

world to reflect, on his honour. And thus the idea that any concession to the Catholics would be an infringement of the Oath, took so deep a root in an ill-regulated mind, enfeebled by disease, that no argument or persuasion, even from those whose opinion he most valued, could ever afterwards eradicate it. The motives, however mistaken, which guided him, must be universally held in respect, though they will now almost universally be acknowledged to have occasioned most deplorable results.

Lord Fitzwilliam landed in Ireland in January, 1795. 'Almost immediately upon his landing,' I quote Lord Stanhope, 'he received addresses from bodies of Roman Catholics and Protestant Dissenters, and in his answers was understood as intimating his agreement to their wishes.' The consequence that might naturally have been expected at once ensued. All Ireland was in a blaze. 'Petitions,' continues Lord Stanhope, 'praying for the complete emancipation of the Catholics poured in from every county in Ireland.'

Grattan, the apostle of emancipation, with the Lord Lieutenant and the people both on his side, would have been more than mortal if he had resisted the pressure. He at once introduced a Bill to abolish all disabilities whatsoever.

It appears that Lord Clare at once made up his mind. 'Only two days after the motion of Grattan, the Chancellor wrote to his friend in London, declaring that the King could not give his assent to the measure without a direct breach of his Coronation Oath.' This is the earliest mention of that much controverted question. It is noticeable that the King, in his let-

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ter of the 4th of February, to Mr. Pitt, does not mention this as one of his objections to the measure. He dwells there on the analogy of foreign States, and on the change of the principles of Government, which its adoption would involve.[1]

The editor of Lord Auckland's Life has endeavoured to prove that Lord Loughborough had no share in the responsibility of advising the King concerning the Coronation Oath. However this may be, it appears certain that the first impression on his Majesty's mind with regard to the Oath, was produced by the paper dated the 5th of March, which is in the King's own handwriting, but has hitherto been supposed to be the joint production of the English and Irish Chancellor.[2]

The King at once consulted Lord Kenyon. His letter is written in evident alarm at the new phase the question had assumed:—[3]

From the King to Lord Kenyon.

'Queen's House, March 7th, 1795.

'The question that has been so improperly patronised by the Lord Lieutenant of Ireland, in favour of the Papists, though certainly very properly silenced here, yet it seems not to have been viewed in what seems to me the strongest point of view, its militating

[1] The King to Mr. Pitt. Lord Stanhope's Life of Pitt, vol. ii. Appendix, p. xxiii.

[2] Cf. Lord Campbell's Life of Lord Loughborough, vol. viii. p. 172, and Lord Auckland's Correspondence.

[3] This correspondence was printed for private circulation in 1829, edited by Dr. Philpotts, afterwards bishop of Exeter; but as very few copies can have reached the public, I make no apology for inserting the letters here.

against the Coronation Oath and many existing statutes. I have, therefore, stated the accompanying queries on paper, to which I desire the Lord Kenyon will, after due consideration, state his opinion in the same manner, and should be glad if he would also acquire the sentiments of the Attorney-General on this most serious subject.

'GEORGE R.'

Enclosure in the King's handwriting:—

'The following queries on the present attempt to abolish all distinctions in religion in Ireland, with the intention of favouring the Roman Catholics in that kingdom, are stated from the desire of learning whether this can be done without affecting the Constitution of this country; if not, there is no occasion to view whether this measure in itself be not highly improper.

'The only laws which now affect the Papists in Ireland are the Acts of Supremacy and Uniformity, the Test Act, and the Bill of Rights. It seems to require very serious investigation how far the King can give his assent to a repeal of any one of those Acts, without a breach of his Coronation Oath, and of the articles of Union with Scotland.

'The construction put on the Coronation Oath by the Parliament at the Revolution seems strongly marked in the journals of the House of Commons, when the clause was proposed by way of Rider to the Bill establishing the Coronation Oath, declaring that nothing contained in it should be construed to bind down the King and Queen, their heirs and successors,

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not to give the royal assent to any Bill for qualifying the Act of Uniformity so far as to render it palatable to Protestant Dissenters, and the clause was negatived upon a division.[1] This leads to the implication that the Coronation Oath was understood at the Revolution to bind the Crown not to assent to any repeal of any of the existing laws at the Revolution, or which were then enacted, for the maintenance and defence of the Protestant religion as by law established. If the Oath was understood to bind the Crown not to assent to the repeal of the Act of Uniformity in favour of Protestant Dissenters, it would seem to bind the Crown full as strongly not to assent to the repeal of the Act of Supremacy or the Test Act, in favour of Roman Catholics.

'Another question arises from the provisions of the

[1] The extract from the Commons' Journals alluded to by His Majesty :—

Jovis 28° *die Martii* 1° *Willielmi et Mariæ*, A.D. 1689.

'Coronation Oath.—The Bill for establishing the Coronation Oath was read the third time.

'A Proviso, ingrossed, was offered, as a rider, to be made part of the Bill, which was read the first time, and is as follows :—"Provided always, and be it hereby declared, that no Clause in this Act shall be understood so to bind the Kings and Queens of this Realm as to prevent their giving their Royal assent to any Bill which shall, at any time, be offered by the Lords and Commons assembled in Parliament for the taking away or altering any Form or Ceremony in the Established Church, so as the Doctrines of the said Church, a publick Liturgy, and the Episcopal Government of it, be preserved." A Debate arose thereupon.

'The Debate upon the Proviso, offered to be made part of the Bill for establishing the Coronation Oath, was resumed. And the question being put, That the Proviso be read a second time, it passed in the negative.

'Resolved—That the Bill do pass, and that the title be "An Act for Establishing the Coronation Oath."'

Act limiting the succession to the Crown, by which a forfeiture of the Crown is expressly enacted, if the King upon the throne should hold communication, or be reconciled to the Church of Rome. May not the repeal of the Act of Supremacy, and the establishing the Popish religion in any of the hereditary dominions, be construed as amounting to a reconciliation with the Church of Rome? Would not the Chancellor of England incur some risk in affixing the Great Seal to a Bill for giving the Pope a concurrent ecclesiastical jurisdiction with the King?

'By the articles of Union with Scotland, it is declared to be an essential and fundamental article, that the King of Great Britain shall maintain the Church of England as by law established in England, Ireland, and Berwick-upon-Tweed.

'The bargain made by England in 1782, by Yelverton's Act, gives rise to the question, whether the repeal of any of the English Statutes adopted by that Act would not be a direct violation of the compact made by the Parliament of Ireland with Great Britain.'

From Lord Kenyon to the King.

'March 11, 1795.

'Lord Kenyon received your Majesty's commands when he was in the country. He came immediately to town, and incloses what has occurred to him upon the question. He has conferred with the Attorney-General, and believes there is not any difference in opinion between them.

They are neither of them apprised what was the

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extent of the alteration meditated to be made in Ireland.

'Your Majesty's most obliged and dutiful subject,

'KENYON.'

'The Act for the Union of England and Scotland has made the Church Establishments in the two countries essential and fundamental parts of the Union, and has declared that the Acts of the two countries for securing the respective Church government, shall be and continue at all times coming, part of the terms of the Union. That I understand to be the necessary construction of the words of the 11th [1] section of the Act.

'The Coronation Oath enacted in W. and M. requires the King to maintain the Protestant reformed religion established by law.

'The 8th section of the Act of Union shews that by religion established by law is meant the Doctrine, Worship, Discipline, and Government of the Church. This includes the King's Supremacy, and the various orders of Ministers, and the provision which the State makes for the decent support of the clergy. The doctrine and discipline are regulated (inter alia) by the

[1] 5 Anne c. 8. s. 11.—'And it is hereby further enacted that the said Act passed in this present Session of Parliament, intituled "An Act for Securing the Church of England as by Law established," &c., and also the Act of Parliament of Scotland, intituled "An Act for Securing the Protestant Religion and Presbyterian Church Government," be, and shall for ever be, held and adjudged to be, and observed as fundamental and essential conditions of the said Union, &c. &c., and the said Act passed in this present Session of Parliament, &c., and also the said Act passed in the Parliament of Scotland, &c., and are hereby enacted and ordained to be and continue in all times coming the compleat and entire Union of the two Kingdoms of England and Scotland.'

Acts of Uniformity, and the Liturgy, as it stands enacted by the Statute of 13 and 14 Car. II. CHAP. XI. 1795.

'To overthrow any part of the Church establishment, as I have now stated it, would, as it seems, militate against the Coronation Oath, as settled in the Stat. 1 W. & M. and the Act of Union; and contravene an essential and fundamental part of the Act of Union.

'In order to preserve the Established Church, several laws have been enacted, subjecting those who dissented from the Established Church to penalties or disabilities, and these have pressed sometimes upon one denomination of sectarists, and sometimes upon another, as the temper of the times or the supposed necessity of the case required. Papists and Conventiclers have, in their turns, felt the rigour of Statute Law.

'The Statute of 22 Car. II. c. 1, for preventing Conventicles, and other Statutes of like tendency, existed at the time when the Coronation Oath was framed and enacted by 1 W. & M. c. 6, yet in the same session of Parliament the Law called the Toleration Act was made. Several indulgences, both in England and Ireland, have been since granted to several denominations of persons dissenting from the Church of England. Those regulations have been supposed by the makers of them not to be hostile to the Church of England, as by law established, but merely to repeal, or lessen the rigour of penal Statutes, which, though thought necessary at one season, were deemed inexpedient at another time, and under different circumstances. So long as the King's supremacy and the main fabric of the Act of Uniformity, the doctrine, discipline, and government of the Church of England, are preserved as

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the National Church, and the provision for its ministers kept as an appropriated fund, it seems that any ease given to sectarists would not militate against the Coronation Oath or the Act of Union.

'The proviso, which was rejected on 28th March, 1689, as appears in 10th vol. of Commons' Journals, p. 69, might possibly be rejected as being thought unnecessary; for it is observable from printed history, that in that very year a commission issued authorising several bishops and other learned men to revise the Liturgy and Canons, and prepare such alterations as they should think expedient.

'Though the Test Act appears to be a very wise law, and in point of sound policy not to be departed from, yet it seems that it might be repealed, or altered, without any breach of the Coronation Oath, or Act of Union. The temporary Bills of Indemnity, which have so frequently passed, have in effect from time to time dispensed with it in some degree. It should seem that the Chancellor of Great Britain would incur great risk in affixing the Great Seal to a Bill giving the Pope a concurrent ecclesiastical jurisdiction with the King. It would be contrary to the Coronation Oath, and subversive of a fundamental part of the Act of Union.'

His Majesty probably did not consider this answer sufficiently explicit. He again applies to Lord Kenyon:

From the King to Lord Kenyon.

'Queen's House, March 14th, 1795.

'The King is much pleased with the diligence shewn by the Lord Kenyon in answering the questions pro-

posed to him; but as he seems not fully apprised of the extent of the *present* application of the Roman Catholics of Ireland, the King has thought it best to enclose the petition received yesterday, and the state of the question as drawn up by a right reverend prelate of that kingdom, on which the King wishes to have the Lord Kenyon's further opinion in writing.

'GEORGE R.'

(Enclosed.)

'It has been confidently reported in Ireland, that in compliance with the unbounded requisition of the Roman Catholics, a Bill has been prepared to capacitate them to sit in Parliament without making and subscribing the declaration against Popery, or taking the Oath of Supremacy. This appears to be a direct violation of the English Act of the 30th Charles II., statute 2, chap. 1, which enacts, that no person shall sit or vote in Parliament until he shall have taken the Oaths of Allegiance and Supremacy, and made, and subscribed, and audibly repeated the declaration against Popery therein contained; which Act, as far as it relates to the said oaths and declarations, was made the law of Ireland, by the Irish Act of the 21st and 22nd of George III. chap. 48, sec. 3. It also appears to be a repeal of the Declaration of the Bill of Rights, which are expressly enacted and established "to stand and remain and be the law of the realm *for ever*." It seems to be a repeal of the Act of Settlement, "whereby all the laws and Statutes of the realm for *securing the established religion* were ratified and confirmed." Among which statutes so confirmed, we must place the

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preceding statutes of Charles II. and the Declaration of the Bill of Rights. It appears also to be a direct violation of the Act of Union (5 Anne, chap. 8), by which the inviolate maintenance and preservation of the established religion in Ireland is secured, by providing "that all and singular the Acts of Parliament *then in force* for the establishment and preservation of the Church should remain and be in full force *for ever*. And it is further therein enacted, that this Act, and all and every the things therein contained, be and shall for ever be holden to be a *fundamental and essential* part of the Union." It seems also that an inviolable observation of all these statutes is made obligatory upon every King and Queen of the realm by the Coronation Oath.

'Is it not advisable, therefore, to put an end at once to a claim that is inconsistent and incompatible with the terms of the original contract between the King and the people, and subversive of that part of the Constitution formed for the preservation of the Protestant Religion established by law? The same great fundamental statutes, which secure the rights and liberties of the people, secure also the *Protestant Reformed Religion* as by law established, and if that part of them which secures our religion is to be repealed now, what security remains for the preservation of our civil rights and liberties? Is it not therefore necessary to extinguish such vain expectations by an explicit declaration that they cannot be complied with?'

From Lord Kenyon to the King.

'Lord Kenyon returns the petition he was honoured

with, and his sentiments on the state of the question which accompanied.

'Your Majesty's most grateful and dutiful subject,

'KENYON.'

'It is a general maxim that the supream power of a State cannot limit itself.

'Either of the Houses of Parliament may, if they think proper, pass a Bill up to the extent of the most unreasonable requisition that can be made; and, provided sound policy, and a sense of the duty they owe to the established religion of the country, do not operate on their minds so as to prevent their doing what is improper, there is no statute law to prevent their entertaining and passing such Bill, to abolish the supremacy, and the whole of the government and discipline of the Church of England, as now by law established. Our ancestors did not suppose, at the time of the Revolution, that any danger was to be feared from these quarters, and therefore the Statute Book does not exact any promissory oath from the Members of the Houses of Parliament, binding them not to receive or pass Bills hostile to the Reformed religion as by law established. But that is not the case of the King. Recent misconduct in the reign of King James II. had raised great jealousy, and therefore the Coronation Oath exacts from the King an oath to maintain the laws of God, the true profession of the Gospel, and the Protestant Reformed Religion established by law, etc. etc.

'The state of the question with which I have been honoured supposes that the requisition now made is a direct violation of the statute of 30 Car. II. sec. 2.

'It certainly is inconsistent with that law, and if it

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shall be yielded to, will, in effect, repeal it, though that law, when it was made, was looked upon by the legislature as necessary for the more effectual preserving the King's person and government, by disabling Papists from sitting in either House of Parliament. How far that law still continues a fence for the Church as by law established, must be judged of by those who are to act on the proposed repeal, if such a measure should be brought forward.

'Those who think it is an important and necessary part of the defence of the Established Church, may also think that the Coronation Oath was meant to provide against the King's consenting to the repeal; for though an Act for repealing the statute of Charles II. would not in itself break in upon the Established Church, yet it would facilitate steps which might afterwards follow for that purpose, as by this means Papists might constitute a majority of each House of Parliament.

'It cannot well pass observation, that the whole system of laws, as to the purpose of the present inquiry, was to guard against the possible introduction of Popish influence into any branch of the legislature. As far as respects the Sovereign, it is guarded by the oath he takes, and with respect to the Houses of Parliament by the Declaration in 30 Car. II.

I am not aware what clauses in the Bill of Rights are supposed to be broken in upon by what is suggested as likely to be proposed. The statute of 12 and 13 William, chap. 2, shows the great anxiety the legislature then had to guard against Popery. But here again the question recurs, How is the supream power of the country bound? The two Houses of

Parliament are not under any promissory oath—that obligation has been extended to the King only. This statute of William III. has done no more, as far as respects the present question, than the former statutes had done.

'The paper I before sent stated, I believe, what then occurred, and all that at present occurs on the Statute of Union. In short, the question resolves itself to this:—Will the proposed Act violate that oath which promises to maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship, discipline, and government thereof, as it was at the time of the Union by law established within the kingdoms of England and Ireland, etc.?

'The petition expresses apprehension of proscription, persecution, and oppression. All grounds of such apprehensions, if such there really are, may be safely removed, if the late benefits, which the petition admits, have not removed them, without endangering the Established Church or violating the Coronation Oath.

'I will out of anxiety add one word more. It seems to me that the judgment of the person who takes the Coronation Oath must determine whether any particular statute proposed does destroy the government of the Established Church.

'It seems that the oath, couched in the general terms in which it is found, does not preclude the party sworn from exercising a judgement, whether that which he is bound to maintain will be essentially, or in any great degree, affected by the proposed measure.'

The Attorney-General's opinion, which seems to have coincided with Lord Kenyon's, is briefly expressed in the note which follows:—

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The Attorney-General to Lord Kenyon.

'Does it not come round to this? When an oath is prescribed that you *shall maintain the settlement of the Church generally*, without prescribing that you shall not give assent to *the Repeal of a particular* Act, must not the judgement of the person sworn, *being constitutionally advised*, determine whether the statute proposed does destroy the maintenance of the Church? Can the oath so generally expressed preclude the party sworn from exercising a judgement whether that which he is bound to maintain will be essentially or in any, and what degree, affected by the proposed measure?

'This strikes me so at this moment, but I am lost in this casuistry.

'Does it counteract anything you have written?

'J. S.'

This correspondence appears highly honourable to all the parties concerned.

The reasoning of Lord Kenyon will be generally acknowledged to be conclusive on the point at issue.

The nature and force of the Coronation Oath has been discussed *ad nauseam*, and has been we may hope at last[1] finally set at rest.

The opening sentence of Lord Kenyon's reply appears to me conclusive. 'It is a general maxim that the supreme power of a State cannot limit itself.' That is to say, in effect, the King has no power to bind himself beyond the intention of the party prescribing the Oath. Parliament prescribed the Oath, and Parliament has

[1] 1869.

clearly a right to interpret its own act, or to remit altogether the observance. Even allowing that the Oath was originally intended to bind the Sovereign in his legislative capacity, the Parliament, representing the collective authority of the nation, has full power to release him. It is clear, however, that the Oath was intended to prevent the Sovereign from dispensing with the assistance of Parliament, and proceeding to destroy the Protestant form of religion, as James the Second had endeavoured to do.

The question is clearly put by Bishop Watson in his Anecdotes of his own Life.

'The Coronation Oath,' he there says, 'is the confirmation of a promise made by the King to the people: the obligation of the promise ceases and the oath is relaxed when the people by the two Houses of Parliament declare that they do not in a certain point require the performance of it.'[1]

I will only add a quotation from a recently published work which bears testimony to the accuracy of the opinion given by Lord Kenyon:

'He' (Mr. Pitt) 'was from the first aware that he should find difficulties in carrying the measures he desired; that some of his colleagues were averse to them, and that the King himself entertained, or at least had entertained, scruples as to the propriety of his consenting to them. *This last difficulty, however, he had a right to conceive to be not insuperable*, for he was aware that a year or two before George III. had consulted the Chief Justice, Lord Kenyon, and the Attorney-General, Sir John Scott, on the subject, putting his

[1] Watson's Anecdotes of his own Life, published in 1818.

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perplexities before them in the form of a legal question, whether he were not absolutely precluded by the terms of the Coronation Oath from consenting to any relaxation of the laws affecting the Roman Catholics. Both of these great lawyers were, as politicians, strongly averse to any relaxation, but they combined a sound knowledge of their profession with uncompromising honesty, and unhesitatingly replied to the Sovereign that his oath did not forbid, and never could have been intended to forbid, his giving his royal sanction to any law approved and passed by Parliament. Indeed a knowledge of law was hardly required to establish that proposition; for unless that principle were admitted it would follow that the Parliament which framed the Coronation Oath must have had power to bind the whole legislature for ever on one point; and if on one, on all on which it desired to bind it.'

. . . . . .

'The first principle of the Constitution is the omnipotence of Parliament; and that Parliament which certainly has power to remodel the oath to be taken by a future Sovereign, has power also to vary or qualify the interpretation to be fixed to an oath already taken. In fact, the oath is taken to the people, and in the eye of the Constitution, Parliament is the people.'[1]

The year 1795 was remarkable for the bad harvest, and there was much distress and some rioting in the towns in consequence of the scarcity of bread corn. 'This month' (July), says the Diary, 'wheat sold at

[1] Yonge's Life of Lord Liverpool, vol. i. p. 44, and vol. iii. p. 340.

a guinea a bushel,——[1] (wheat and rye mixed) at fifteen shillings; barley at twelve shillings, oats at six shillings; very large importation from abroad. Much rioting on account of the dearness and scarcity of bread corn.'[2]

'The night before last,' writes Lady Kenyon on the 16th of July, 'they were very violent, wanted to get to Mr. Pitt's house to pull it down, but were kept off by the military. The Duchess of Gloucester was in great danger returning from the Circus: she was pursued by the mob, crying "No royalty!" "No Pitt!" till she got very near to her own house.'[3]

Later on in the year, Lord Kenyon thus replies to his wife's apprehensions:—

'Perhaps you may have been anxious about me on account of the assembly yesterday at Westminster Hall, but though a great crowd got together to hear Fox make speeches, yet they parted without any riot, and I got home on foot without the least insult, or seeing any confusion. I dine at Lord Belgrave's to-morrow.'[4]

Measures to alleviate the distress, and, as far as possible, to mitigate the scarcity, formed the principal subjects of discussion in the next session of Parliament.

Thomas Pennant, the traveller, thus comments on the scarcity of grain:—

'The corn bears a high price here. I am credibly informed that the Liverpool factors will offer to the farmers twenty-two shillings for what the farmers only

[1] Illegible.
[2] Diary, July, 1796.
[3] Lady Kenyon to Lord Kenyon, July 16, 1795.
[4] Lord Kenyon to Lady Kenyon, November 17, 1795.

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ask in market eighteen shillings and sixpence. If we have a peace, it will instantly go to France, for in the calamitous state of that country, any price will be given. I hope that evil will be provided against; otherwise there will be unblameable riots in all parts. I did write a good while past to the Master of the Rolls about the prudence of the measure of providing corn from America. If shiploads were sent to the parts where it is now most wanted and sold at prime cost, it would be a most popular step.' [1]

The writer of this letter was an intimate friend of Lord Kenyon's.

He was a strong Tory of the old school, and had been a zealous opponent of Dean Shipley's ever since the trial of that functionary in 1780: the recollection of which was still fresh in the Principality.

The following are extracts from a large mass of correspondence by the same author:—

'Downing, January 15th, 1795.

'My dear Lord,—This comes with every good wish of the season, and that the same may attend your worthy family. This day flatters us with the hopes of peace: an event devoutly to be wished, yet not to be urged by the nation, as that will prove the only means of forcing on us a bad one. . . . . I think I may fairly say that our county, even the lower people, are loyal, very few excepted. This is a most comfortable reflection. I truly rejoice that our representative took the side of "for the passing the Bills against seditious meetings." I see the General Enclosing Bill is in agi-

[1] Thomas Pennant to Lord Kenyon, March 8, 1795.

tation. There never was a Bill which may be so productive of jobs.

. . . . . .

'Your Lordship's obliged and faithful servant,

'THOMAS PENNANT.'

The next shows the jealousy with which the Tories of North Wales still regarded the Dean of St. Asaph:[1]—

'Does the Dean forget that judgement hangs over him still, and how unworthy he is of the lenity which still keeps it in suspension? We perfectly applaud your lordship's answer.[2] It was fit that the names of the Catilinarian band should be known. I should never sleep in peace had the black leader permission to wear a sabre. I little doubt but its first use would be to cut down the supporters of every constitutional right. . . . .'

The Same to the Same.

(Extract.)

'Dr. Parr[3] has visited the Vale and brought to our Solomon —— of —— his daughter, whom he had married, and the squire's son under his tuition. The squire is a true democrat, and is even said to threaten to join the French. The Doctor was zealous in making proselytes, but met with insults and rebuffs from every quarter except his Honor; possibly not from the Dean, who was much with him.'

[1] Vide supra, chap. vi.

[2] Lord Kenyon had refused, as Lord Lieutenant, the offer of his services in raising volunteers.

[3] The celebrated Dr. Parr, born 1747, died 1825.

CHAP. XI. 1796.

In 1796, Lord Kenyon endeavoured to secure a seat in Parliament for his eldest son, as Member for the county of Flint. He was frustrated by an electioneering manœuvre, which was not very creditable to its authors.

Sir Roger Mostyn, who had represented the county in eight Parliaments, died in 1796. His son, who became Sir Thomas Mostyn, was still some months under age. It was under these circumstances that a number of influential people invited Mr. Kenyon to stand.

The Mostyn party, whose influence was paramount in the county, pressed the young baronet's claims, and by favour of the High Sheriff he was actually returned, notwithstanding the loud and angry protests of many of the county gentry.

The election afterwards came before the House of Commons, when the defeated candidates petitioned against the return. The case was so clear that Sir Thomas did not venture to contest the petition, and eventually a Mr. Lloyd, who had stood second on the poll, was declared the Member.[1] The matter is alluded to in the letters which are subjoined :—

Sir Thomas Hanmer to Lord Kenyon.

'Bettisfield, Novr. 9th, 1796.

'My dear Lord,—Our election was yesterday. Sir T. Mostyn was proposed again, upon which your son was proposed by Mr. Davies and seconded by Mr. Waring. They then put up John Lloyd, of Havordunas; upon which a poll was demanded for Mr. Kenyon, and we polled a tally of the first ten votes;

[1] Oldfield's Representative History, vol. vi. pp. 67, 68.

then they polled a tally of the same number for Mr. J. Lloyd, and then they polled for Sir Thos Mostyn. Upon this I spoke to Mr. Bennion, and he seemed to think that our business was done, and did not poll a second tally, tho' there was more to poll. Upon which, the other party polled on for a majority for J. Lloyd; and, lastly, they polled a majority beyond J. Lloyd for Sir Thos Mostyn; upon which the Sheriff declared Sir Thos Mostyn duly elected, and returned him. So you see they have John Lloyd ahead of your son, in case there is a petition against Sir Thos. Mostyn. The party all seemed very flat and serious, and behaved very differently from what they did at the nomination, saving a few strictures from the Dean upon your son's *mode of addressing* the freeholders, which he said was so much of a Republican form, "having omitted the usual method of the gentlemen, clergy, &c.," that it at once struck at the levelling all distinctions, which he said he could not believe came from Gredington, the house of the Chief Justice of England, but that it must certainly be an abominable and impudent forgery; and that tho' the name of Lloyd Kenyon was subscribed to it, he did not believe he wrote it, and so on and on a deal of nonsense, not worth your lordship's notice. I think they are very much ashamed of being driven to the distress of taking the Philosopher, as we call him, J. Lloyd, for a Deputy; and I suppose Mr. Davies will write you fully about it, and acquaint you that it is our wish that a petition should be presented against the return; which, I think, will mortify them very much; and whoever the man may be that sits at last, it will show that we have power to prevent

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Sir Thos Mostyn from sitting this time, which in some degree will answer our end. I am just returned, and have not been at Gredington to acquaint them, and

'I am, my Lord, in haste,

'Your affecte and faithful servt,

'THOMAS HANMER.'[1]

Peter Whitehall Davies to Lord Kenyon.

'Broughton, Dec. 21st, 1796.

'My Lord,—I have had the satisfaction of being informed that the petition of the independent freeholders of the county of Flint has been presented to the House by the Master of the Rolls . . . Notwithstanding the integrity of the petition, I am told that every mode which can be produced by evasive art will be brought forward to render it of none effect. In the first place, they say that we cannot make his minority appear to the satisfaction of the House. In the next place, that they will procrastinate the final determination of the House upon the petition, until Sir Thos. Mostyn is legally qualified to take his seat in the House. . .'

In 1796, Lord Kenyon was made Lord Lieutenant and Custos Rotulorum of the county of Flint, a distinction which was at first very gratifying to him.

The extra work, however, which it entailed, pressed too much on his spare time. He writes to his neighbour, Sir Thomas Hanmer, that he is sick of Militia business, and in 1798 he resigned the Lord-

[1] The writer of this letter was the grandfather of the present Lord Hanmer, and through life one of the most esteemed friends of Lord Kenyon. He died in 1828.

Lieutenancy, though he retained the office of Custos Rotulorum until his death. CHAP. XI. 1796.

'*Thomas Pennant, Esq., to Lord Kenyon.*

'Downing, June the 3rd, 1798.

'My dear Lord,—I lament your retreat from your provincial office, which you have so fully discharged; yet when it contributes so greatly to your lordship's (comfort) amidst the important duties which oppress you, I must acknowledge my concern to be selfish. You could not have had in all the kingdom so respectable, so amiable a successor.'[1]

In the autumn of this year Lady Kenyon's health became seriously affected, and the Chief Justice, in consequence, resided with her for some months at Bath. Here they made the acquaintance of the talented Hannah More. The circumstance is alluded to in her Diary, where she expresses the pleasure it gave her to converse with so excellent a man.

'Your lordship,' she writes, 'is such a known advocate for religion and virtue that I presume to break in for a moment upon your very important time to recommend to your patronage the enclosed little plan, undertaken with a view to instruct the poor, which at this alarming period seems to be no less an object of political than moral importance.'[2]

The object was a 'plan for establishing a repository of cheap publications on religious and moral subjects,' a step towards popular education; the importance of which the writer was one of the first to recognise.

[1] Lord Belgrave.

[2] Hannah More to Lord Kenyon. Dated Bath, January 28.

CHAPTER XII.

Office of Custos Brevium—Mr. Cambridge—Earl of Oxford's Protest—Trial of Thomas Williams—Mr. Erskine—Loyalty Loan—Trials of Cuthill and Wakefield.

(1797—1798.)

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In 1797 Lord Kenyon was able to bestow upon his eldest son, who had attained his majority the previous year, the reversion of a valuable sinecure, the Custos Brevium of the Court of King's Bench: and when later in the year his second son came of age, he was appointed Filazer of the Court.

The former office was held for life by Mr. Way, under a deed executed by Lord Mansfield when Chief Justice. Lord Thurlow thus writes to his friend on the subject in 1795:—

Lord Thurlow to Lord Kenyon.

'Brighton, Sept. 13, 1795.

'My dear Lord,—In walking upon our Steen here I met Mr. Way, whom you know. He was very communicative, and as our conversation turned a little towards the places which the late Lord Mansfield held in the King's Bench, I think it right you should know what passed, tho' probably it will not be new to you; for tho' he talked very freely upon the rest of the late Earl's affairs, he seemed to be more reserved

on the subject of the places to me than he used to be with you, if I remember right the turn of your conversations with him.

'Lord M. has left the whole of his fortune, with small abatement, to the present Earl; but I forgot to ask how limited. To his wife he has given 1,500*l.* a year during her widowhood, in addition to her original jointure, which is on the Scottish estate, and supposed not to exceed 1,000*l.* p^r^ ann. He leaves her the use of Kenwood and of the house in town till the present Earl comes of age; and after that time gives her 350*l.* p^r^ ann. during her widowhood to find herself a house. To his four younger children he has given 30,000*l.* a piece, in lieu of anything they can claim under his settlement; so that the whole interest in all he has left vests in his eldest son.

'I find from Way that the places in the B. R. are on this and the late Earl's life, and consequently that nothing falls in. Thinking that no chatter we fell into would incumber or affect you, I made no scruple of putting cases to him about opening the Patent, with or without the concurrence of the infant, or the executors. It was upon this occasion that he seemed somewhat to draw up, and to intimate that was a thing for further consideration; upon which I thought it necessary to make him observe that I had not the least idea of making any proposition to him, or of conveying any to you, but had been led into that idle sort of talk merely by the way in which he had talked of the matter, or perhaps by the malaria of a listless place, and the rest of the conversation went on with his commonplace observations on his great friends and his own health.

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'His own health seems exceedingly broken, and his spirits worn with what he calls a flying gout, which produces loss of appetite, want of sleep, and a lowness unaccountable. Baldwin has sold his house to the Surgeons' Company, who (their lease of Surgeons' Hall being out) are converting that into Surgeons' Hall, and there they mean to dissect malefactors. It is next door to him, and he laments over the money he has laid out upon his house, from which by these means he expects to be driven, and seems quite oppressed with that disaster. This, however, I give you by rebound from the conversation he holds with others; he did not mention that to me. I have not another sheet of paper; so I can't treat you with a cover.

'T——.'

When, many years afterwards, these sinecure places were abolished, a very improper attempt was made to withhold compensation from the holders. Though the attempt was defeated by the good sense of the majority, there were many people who talked of these sinecurists as little better than harpies, because they refused to surrender their pecuniary rights. The real nature of these places has been very imperfectly understood.

The Judges at the close of the last century were paid partly by fees and partly by salary. Their whole remuneration was very inadequate to the duties required of them. Thus Lord Kenyon's average salary (fees included), during the fourteen years he was Chief Justice, only amounted to 6,500*l.* a year, from which must be deducted all the expenses of the Circuits and

other heavy charges. It is obvious, therefore, that there would often have been difficulty in inducing the best lawyers to accept the high judicial posts, and to sacrifice their large professional incomes, if there had not been certain contingencies attached to the possession of the offices.

Of this nature were the valuable sinecures I have mentioned, which were ever regarded as saleable, though Lord Kenyon, amongst others, always refused to exercise the right of sale.

We have already seen that his refusal to sell the six clerks' offices while he was Master of the Rolls, had been lauded as an act of uncommon disinterestedness. In fact, he was the first Master who had refused to avail himself of the right.

So impressed was Lord Kenyon with the inadequacy of the Judges' salaries, that with some difficulty he succeeded in inducing Mr. Pitt to increase those of the Puisnes.

At the same time an increase of salary was offered to himself, and refused on the distinct understanding that he retained the patronage of the office. He preferred running the chance of obtaining one or more of the sinecure places for his sons, and his determination was approved by Mr. Pitt and Lord Loughborough.

'It is with sincere pleasure,' writes the latter,[1] 'I communicate to you the inclosed letter. The simplest security seems to me to be a bond from Messrs. H. (Hoare), (for the due performance of the duties.)'.

[1] On the appointment of his son as Custos Brevium, 1797.

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'You forget your own affairs, and that I have an answer to send to the letter I sent you on Friday.'[1]

A better system, doubtless, was afterwards introduced when the Judges were paid by fixed salaries, and all sinecure places abolished; but it was neither just nor equitable that the descendants of the Chief Justices who then held the appointments should be expected to forego their claims. The offices, in fact, represented so much capital invested by their ancestors for their benefit, and were as much entitled to respect as any Trust Estate in the kingdom. We are too apt to judge of these matters by the light of our own day, and to forget the contracts, actual or implied, entered into by a former generation, to which, by every reason of justice and good policy, the legislature is bound to give effect.

The letter from Mr. Rose, which I subjoin, relates to the increase of salary above-mentioned; and is interesting as shewing the views of Mr. Pitt's Government on the subject of corruption:—

'*The Right Hon. George Rose to Lord Kenyon.*

'My dear Lord,—I feel the propriety of your conversing with me on the subject of the allowance to the chairman of the Middlesex Sessions, rather than writing about it, as some particulars respecting the extent of the duty should be explained to you. I have no other wish than that a salary proportioned fairly to the trust and labour of the situation should be allowed to the person who fills it; with Mr. Mainwaring I have

[1] Letters from Lord Loughborough to Lord Kenyon, not dated.

no private friendship, and his political conduct on very many occasions (generally the most important) has not recommended him much to favor. Mr. Pitt, as well as myself, has some time felt as your lordship does relative to the Puisne Judges, and it is his intention in the next session to propose to augment their salaries to 3,000*l.* a year, which will probably be satisfactory, and perhaps to make a proportional increase to the profits of the Chief Baron; this is *sŏlĕly* for your lordship's information at present. I have the good fortune to agree in opinion also with your lordship as to the proceedings of the late Committees, influenced by their Chairman. All real *abuses* I wish to see remedied as anxiously as any man in the kingdom. I will venture to say, too, that no man living detests corruption and all corrupt practices more heartily than I do, but no Government can well go on without a moderate influence; we must take men as they are, we cannot make them to our minds. I can say with the most sacred regard to truth, that no secret rewards have been bestowed by the present Government in support of its measures. Whatever has been given to or done for any, the public know as well as I do. The chief promoter of the late inquiries knew before they took place, as well as now, that in the Courts of Justice no just grounds of complaint existed,—and producing all that is therein stated can answer no good end. At the same time it was impossible to check those inquiries without doing much more harm than could be occasioned by their proceeding, as it would then have been industriously propagated that there was much to conceal.

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'Parliament will not meet till the 20th, but that will afford but little accommodation to your lordship, as you must come up for the Term.

'I am, my dear Lord,

'Most faithfully and truly yours,

'GEORGE ROSE.'

From the same pen is the following congratulation on the glorious victory of the Nile, fought by Nelson on the 1st of August:—

'I cannot write to such a friend as your lordship without adding congratulations on a victory more brilliant than any that has preceded it, and more important to the cause of religion, morality, and peace than any that has been obtained in modern times. It is hardly possible Buonaparte should establish himself in Egypt, and he will now find it equally difficult to escape from thence.' [1]

Another letter a week later keeps Lord Kenyon informed of the continued successes at sea:

'Whitehall, Oct. 18th, 1798.

'In the morning of Friday the 12th instant, a severe action (2) was seen from the shore, off the Gory Island. The colours of the different Fleets could not be distinguished, but there were sixteen ships engaged. At three in the afternoon, after an action of five or six hours, two ships were observed astern of the rest, one without her sails, all cut to pieces; five more ahead, making off to the westward, and the rest in close pursuit. There were two others closely engaged.'

[1] Dated October 9th, 1798.

[2] Off the extreme north-west part of the island.

Sir John Warren's squadron of three sail of the line, and two frigates, was off Broadhaven[1] the 10th, and Cap^tn Home, with three sail of the line and two frigates, passed the Shannon on the 8th.'

It was during his residence at Marshgate that Lord Kenyon made the acquaintance of Mr. Cambridge, the author of the 'Scribleriad.' He was then an old man, but retained all the sparkle and vivacity of youth.

These letters are from his pen :—

Richard Owen Cambridge, Esq., to Lord Kenyon.

'My Lord,—The Archbishop of Canterbury was so good as to lend me the book of Harper, the American, which I mentioned to your lordship, and now recommend to you the earliest perusal of it. It is the best Anti-Gallican, and the most copious assemblage of facts, all undeniably proved, that ever I saw. Every page cries to every State in Europe,

> Nescis, heu, perdita, necdum
> Laomedonteæ sentis perjuria gentis?

'These said Perjuria are marked and proved in every page. Forgive the liberty I take in presuming to pronounce so on the character of the work.' . . .

The Same to the Same.[2]

(Extract.)

'I am truly concerned that I dare not venture out

[1] 'Not many hours' sail from the place of action. The Colupus has taken, off Malta, two large frigates, supposed to be those which escaped in Lord Nelson's action. The Leander, it is feared, must be taken, as there are dispatches from Ld. St. V. of the 3rd of this month, when she had not reached him.'

[2] Dated March, 1797.

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of the house this weather. I do much better by recommending to your l'dship my friend Edwards' book[1] (not yet published), sent to me Sunday evening. Finding it so informing and so strictly conformable to every piece of intelligence I had (and that very authentically) received on this most extraordinary subject, I hastened through it that I might send it to your lordship during your confinement. I need not recommend the observation on the contradictory orders of the changeable Directories, producing alternately the massacres of the people of colour, the whites and the blacks. But on the subject of the letter I take the liberty to desire your lordship to read *first* the last leaf of the history.' . . .

Mr. Cambridge's visits were a source of great pleasure to Lord Kenyon and his sons.

'He used to say,' records one of the letters, 'that nothing was so easy as to put any subject into Latin verse.' One of the young men giving him for a subject the following, 'Three blue beans in a blue bladder—rattle bladder rattle,' he immediately struck off these lines—

Tres utre in glauco, glauco fulsere colore,
Utreque percusso, concrepuere fabæ,

and added another version in Greek—

οἱ κυάμοι τρεῖς κυάνεοι βομβοῦσιν ἐν ἀσκῷ
Κυανέῳ· βομβοῦσι, πάλιν βομβοῦσιν ἐν ἀσκῷ.

On another occasion the Chief Justice wrote out the following impromptu from his dictation:

'They rigged out a davit abaft from the wardroom;

[1] Thomas Edwards, Esq., son of a barrister, was bred to the law, but never followed his profession. Vide Cambridge's Life and Works, by his son. London, 1803.

then they brought a hawser along the taffrail, and boused by the main tackle.'

'Tum trabe protrusâ postremâ a parte carinæ,
Excelsâ positis in puppe rudentibus astant,
Grandibus et trochleis contorto fune revellunt.'

The above is faithfully copied from the original in Lord Kenyon's writing.

The Chief Justice appears to have spoken less and less in the House of Lords. As his judicial duties increased, and he himself became older and less equal to the exertion, he was glad to absent himself frequently from attendance in Parliament.

I only find one report of any speech made by him after 1796; and this was in answer to a personal attack made upon him [1] by Lord Moira.

Whilst he was presiding as Speaker in the same year, a curious incident occurred: which at one time threatened unpleasant consequences.

On a motion for Peace, the Earl of Oxford, intending to enter a protest, found on application to the Clerk's office that his address had not been entered on the Journals, and he was informed that Lord Kenyon, who sat for the Lord Chancellor, had carried it away. It had in fact by some carelessness been sent down to Christ Church, Oxford, to one of Lord Kenyon's sons, and though returned by express, did not arrive till its absence had been noticed. The Earl, after publishing the protest in a newspaper, took an early opportunity of bringing the matter before the House. He moved that a Chancellor taking away the motion of any noble lord was guilty of a high breach of privilege; and that

[1] Parl. History, vol xxxiii. p. 181.

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1797.

Lord Kenyon, acting as pro-Chancellor, having done so, should be censured.

The Earl, however, in his anger had contravened a standing order of the House, which declared that any Peer who should print or publish the proceedings of the House, without the authority of the same, should be deemed guilty of a high breach of privilege. The position must have been rather a ludicrous one; but the Earl of Oxford, who had only recently taken his seat, was probably unaware of the forms of the House.[1] He persisted in his motion, and on a division stood alone in a House of fifty Members.

Meanwhile several notorious offenders were tried before Lord Kenyon. William Stone, whose trial for high treason occupied two days, was acquitted, the evidence breaking down. Kyd Wake, who had joined with the rabble in shouting and hissing at the King as he went to open Parliament, was convicted and sentenced to a severe punishment. Daniel Eaton was found guilty of publishing two seditious libels.

'Little sympathy,' says the historian, 'was shown on these occasions; the convicted were not adored as martyrs, nor were the acquitted elevated into the rank of heroes.'[2]

In 1798 a prosecution was instituted against Thomas Williams, a bookseller, for publishing Paine's blasphemous book, 'The Age of Reason.' It was much to Erskine's credit that he consented to prosecute on this occasion. His speech was a masterly exposition of law, and a splendid vindication of the truths of the Christian religion.

[1] Adolphus, vol. vi. p. 683 *et seq.* [2] *Ib.* p. 485.

So gross were some of the passages in Paine's book that the Chief Justice appealed to the good feelings of the reporters not to publish the blasphemous extracts, which it had been necessary to read in order to establish the case.

Lord Kenyon,—'Gentlemen, we sit here in a Christian assembly to administer the laws of the land, and I am to take my knowledge of what the law is from that which has been sanctioned by a great variety of legal decisions. I am bound to state to you what my predecessors in Mr. Woolston's case (2 Strange 834) stated half a century ago in this court, that the Christian religion is part of the law of the land. . . . . .

'I sincerely wish, in the language of the work to which I have just referred (An Apology for the Christian Religion), that the author of the work in question may become a partaker of that faith in revealed religion which he has so grossly defamed, and may be enabled to make his peace with God, for that disorder which he has endeavoured, to the utmost of his power, to introduce into society. . . . . I am fully impressed with the great truths of religion, which, thank God, I was taught in my early years to believe, and which the hours of reflection and inquiry, instead of producing any doubt, have fully confirmed me in.'

The defendant was convicted, and sentenced to a year's imprisonment with hard labour. A curious instance of Erskine's susceptibility is published in the State Trials in connection with this prosecution. It is best narrated in Mr. Erskine's own letter to the Editor:

'Dear Sir,—You are well justified in requiring to know *why*, in the case of the King against Williams,

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for publishing Paine's Age of Reason, after receiving and acting under a general retainer, and convicting the defendant, I had not only refused to pray judgment against him, but had cancelled the retainers altogether.

. . . . . .

'Having convicted Williams, and before he had notice to attend the Court to receive judgment, I happened to pass one day through the Old Turnstile from Holborn, in my way to Lincoln's Inn Fields, when in the narrowest part of it, I felt something pulling me by the coat, when, on turning round, I saw a woman at my feet, bathed in tears, and emaciated with disease and sorrow, who continued almost to drag me into a miserable hovel in the passage, where I found she was attending upon two or three unhappy children in the confluent small-pox, and in the same apartment, not above ten or twelve feet square, the wretched man I had convicted was sewing up little religious tracts, which had been his principal employment in his trade, and I was fully convinced that his poverty and not his will had led to the publication of this infamous book, as without any kind of *stipulation for mercy on my part*, he voluntarily and eagerly engaged to find out all the copies in circulation, and to bring them to me to be destroyed. I was most deeply affected with what I had seen, and feeling the strongest impression that it offered a happy opportunity to the prosecutors of vindicating and rendering universally popular the cause in which they had succeeded, I wrote my opinion to that effect, that mercy being the grandest characteristic of the Christian religion, which had been defamed and insulted, it might be here exercised, not

only safely, but more usefully to the object of the prosecution, than by the most severe judgment, which must be attended with the ruin of this helpless family.'[1]

The incident, which is highly honourable to this great advocate, reminds me of a similar instance of susceptibility which Lord Campbell relates of Lord Kenyon :

'On the Home Circuit a young woman was tried for stealing to the amount of forty shillings in a dwelling-house. It was her first offence, and was attended with many circumstances of extenuation. The prosecutor came forward, as he said, from a sense of duty; the witnesses very reluctantly gave their evidence, and the jury still more reluctantly their verdict of guilty. The judge passed sentence of death. The unhappy prisoner instantly fell lifeless at the bar. Lord Kenyon, whose sensibility was not impaired by the sad duties of his office, cried out in great agitation from the bench: "I don't mean to hang you! Will nobody tell her I don't mean to hang her?" I then felt,' concludes the narrator, 'as I now feel, that this was passing sentence, not on the prisoner, but on the law.'[2]

As I may not have another opportunity for a digression, while writing of Erskine, I will here insert an interesting letter from that great man, in which he alludes to his former friendship with the subject of this biography :

From Lord Erskine to Lord Stowell.

'Buchan Hall, Dec. 7th, 1821.

'My dear Lord,—I read with great satisfaction in the "Times" of yesterday, a most sound, satisfactory

[1] Howell's State Trials.

[2] Lord Campbell's Lives of the Chief Justices, vol. iii. page 88, quoted from Townshend.

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judgment in the Court of Admiralty, in the case of the "Dundee." *The principle on which you acted* (I speak from very old experience) is of *immense importance to the safety of navigation on our narrow seas, and if constantly and rigorously persevered in perjuries can rarely be successful.* When a ship, having the wind with her course, consequently at her command, hears in the night the hailing of a vessel approaching her in the opposite course, or otherwise becomes aware of her approach, *she must know that such vessel is close hauled, and ought not to be diverted from her course;* and she ought therefore to presume that her course would be adhered to, and she ought consequently instantly to bear away even to the wearing of the ship altogether rather than approach to the wind.

'It is remarkable that rule, though known to seamen, never in terms received the public sanction of a court of law until my own time, in a cause tried at Guildhall, before the late Mr. Justice Buller, where as counsel for the defendant I stated, as an old sailor, that if the rule were otherwise, vessels close by the wind and working against it, sometimes against the tide also, might in a crowded navigation be often obliged to bear away from the wind to avoid danger, and might every time lose more ground in a few minutes than could be regained in many hours, whereas the vessel having the wind could lose no ground at all by giving way.

'Mr. Justice Buller felt the importance of the rule so strongly that he recommended the printing it on the ports of the North, and I remember being possessed of a copy of it.

'In the same manner there would be no safety for travellers by land, but for the inexorable law of the road. If the sounds of carriages meeting one another are heard, each party has only to draw close to his own established side, and no accident can happen, and this rule should never be broken in upon by distinctions or qualifications of any kind.

'I remember my excellent friend, the late Lord Kenyon, one of the best and ablest judges, and the soundest lawyer, in trying a cause at Guildhall, seemed disposed to leave it to the jury whether the party who suffered might not have saved himself by going on the wrong side of the road, where the witnesses swore that ample room was left. The answer to which is, the dangerous uncertainty of such an attempt, destructive of all the presumptions of conduct founded upon law. Observing that Lord Kenyon was entangled with this distinction, from his observations in the course of the evidence, I said to the jury, in stating the defendant's case:—

'"Gentlemen,—If the noble and learned judge, in giving you hereafter his advice and opinion, shall depart from the only principle of safety (unless where collisions are selfish and malicious) and you shall act upon it, I can only say that I shall feel the same confidence in his lordship's general learning and justice, and shall continue to delight, as I always have delighted, in attending his administration of justice; *but I pray God that I may never meet him on the road.*" Lord Kenyon laughed, and the jury along with him, and when he came to sum up he abandoned the distinction, saying to the jury that he believed it to be the best course *stare super antiquas vias.* I heard of you

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in Scotland from several of my countrymen there, and was happy to see that you had been everywhere received with the distinction to which you are so justly entitled everywhere.

'This letter, dictated by the zeal of *an old sailor*, calls for no answer.

'Your Lordship's faithfully,

'ERSKINE.'[1]

The loyalty of the great mass of the people was strikingly evidenced in the year 1798, by the support given to the voluntary contribution list. A sum of no less than two millions sterling was thus put at the disposal of the Minister for the purpose of carrying on the war. The following year, 1799, the experiment was again tried, and nobly succeeded.

The principal Officers of State set a brilliant example. Mr. Pitt and Mr. Dundas each subscribed 2,000*l.* a year in lieu of their legal assessments. The Speaker and the two Chief Justices contributed the same sum, 'and the King subscribed no less than one third of his Privy Purse, or 20,000*l.* a year.'[2]

A letter from the Chancellor alludes to the subject:

From Lord Loughborough to Lord Kenyon.

'18th January, 1798.

'My dear Lord,—I saw the Speaker, after the conversation that had passed between your l^p^ and me, this morning. He informed me that he had this day

[1] This letter was kindly given to the 2nd Lord Kenyon by Lady Sidmouth, into whose possession it had come amongst Lord Sidmouth's papers.

[2] Stanhope's Life of Pitt, vol. iii. page 168.

directed his banker to contribute on his part 2,000*l.* by quarterly payments, including therein the amount of his assessment, and that he had also sent several other contributions, which he had been desired to make for other persons, of various sums, but mostly calculated at one-fifth of income. He is sanguine in his hope that the amount of contributions will rise very high, and may even supersede the strict execution of the Act. I afterwards met Lord Darnley, who talked to me on the same subject. His assessment he had computed would amount to about 1,200*l.* or 1,300*l.*; when I mentioned to him the Speaker's intention, he immediately said he should take the same line, and go to the same extent of sum.

'Upon considering what it would be fit for me to do, I have adopted this line, to contribute, inclusive of assessment, 2,000*l.*, by quarterly payments, and as much more as the amount of the fees of the House of Lords, which I shall direct to be paid in for the publick service during the war. The definite sum is far beyond the amount of my assessments; the uncertain amount beyond that, if it bears any proportion to the past receipts, is very far indeed beyond one-fifth of my publick emoluments from office; but after all, it is not an improper sacrifice on such an occasion.

'I ever am,

'Y^rs most sincerely,

'LOUGHBOROUGH.'

Notwithstanding this splendid exhibition of patriotism, there were still a few unprincipled men who continued

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to stir up sedition and encourage discontent in the country. The Government very properly checked these foolish agitations with a strong hand. One prosecution, however, excited some animadversion. This was that of the distinguished Gilbert Wakefield.

While the so-called army of England was threatening an invasion of our shores, Dr. Watson, Bishop of Llandaff, had published a pamphlet, exhorting the people of Great Britain to a vigorous defence of their homes and country.

Wakefield, whose great abilities were unfortunately enlisted on the side of Jacobinism, answered this appeal by a pamphlet, which attacked with great bitterness 'every part of the Constitution in Church and State.'

For this he was prosecuted by the Attorney-General, and Cuthill, who had published the offensive work, shared the same fate. Some passages in the pamphlet, which was brilliantly written, were certainly very offensive. I insert a few specimens:—

'The present Ministry, therefore, and the abuses in Church and State, are indivisibly interwoven with each other, and every man alive who profits by these enormous inequalities can by no means be esteemed independent, but must be considered, in the eye of reason, as an interested supporter of our existing forms, which I, with many others, regard as utterly inconsistent with the true welfare of the community. . . . . The established conduct of these Ministers constitutes an indubitable proof of their ill faith in this transaction, and a proof deduced also from the immutable operation of human passions; they have burthened the country

with an immense, overwhelming debt, by an unexampled prodigality of the public money; they have reduced thousands and tens of thousands to wretchedness and beggary; they have occasioned a devastation of the human species infinitely tremendous, beyond the most merciless tyrants of ancient or modern times; the death of a fellow-creature is no more to them than the fall of an autumnal leaf in the pathless desert; land and sea is covered with the carcases of their slain; they have engendered sham plots, false alarms, and visionary assassinations, for the purposes of deluding the unwary and to establish their own power, by a military despotism in due time over England, like that which now tramples bleeding Ireland to the earth. . . . . .

'If the French come, they shall find me at my post, a watchful sentinel in my proper box, my study among the venerable dead, sometimes investigating the origin of man and primeval history by turning the dark lanthorn of heathen records, or trimming the everlasting lamp of Moses, sometimes musing with the divine professors of the tuneful art, on subjects of taste and fancy, and sometimes meditating with the men of Galilee on mortality and immortality. No systems of "the many made for one," no zeal in support of frontless corruption and "every evil work," shall dip my hands in the blood of men. Non res Romanæ perituraque regna.—Let those who have an interest in these fooleries and sins, let those who have brought us to this most alarming crisis, step forward in the day of danger, and fight the battles of their Baal and their Mammon.'

This may be philosophy, it may be patriotism, but

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it must be confessed it differs very sensibly from the patriotism of Pitt or of Fox.

> When Europe crouched to France's yoke,
> And Austria bent and Prussia broke,
> And the firm Russian's purpose brave
> Was barter'd by a timorous slave,
> Ev'n then dishonour'd peace HE spurn'd,
> The sullied olive branch return'd,
> Stood for his country's glory fast,
> And nail'd her colours to the mast.

In summing up on Cuthill's trial, Lord Kenyon spoke with some vehemence against the criminal excesses of the French Revolution; and his evident sincerity almost rises to eloquence. 'I see no good,' he says, 'in what has lately taken place in the affairs of another country. I see no good in the murder of an innocent monarch. I see no good in the abolition of Christianity. I see no good in the depredations made upon commercial property. I see no good in the overthrow and utter ruin of whole kingdoms, states, and countries. I see no good in the destruction of the state of a noble, brave, and virtuous people—that of Switzerland. In contemplating these dreadful and horrid practices, we are all pledged deeply to do all we can to prevent such evils, unless we are convinced that out of these disorders harmony will immediately arise.'

Both defendants were convicted. Mr. Wakefield, in his defence, outdid himself in the violent eloquence of which he was a master. He did not scruple to attack Attorney-General and Judges, in language more suited to the stage than to the law courts. So little impression, however, did his harangue make upon the jury, that they returned their verdict without even retiring.

Eventually the prisoner was sentenced to imprisonment for two years, but he died only fourteen weeks after the expiration of his imprisonment. Some of the Whig leaders were very severe on the Judges for their conduct on this prosecution.

'I have just read Grose's speech,' writes Mr. Fox to Lord Holland;[1] 'in delivering sentence upon poor Wakefield, and think it is the most abominable and indecent production I ever read; though its being so incredibly nonsensical is in some degree a correction; and what a sentence, too; you know it was said and believed that Wakefield was considered as a poor enthusiast, and the sentence would be mild. I never believed this.'

Many must have shared the pity of the illustrious statesman for the unfortunate prisoner, but it is difficult to see how the ends of justice could have been satisfied with a lighter sentence.

That he was an enthusiast made him in fact more dangerous. With equal reason might Lord George Gordon have been held harmless in his vagaries. Equally an enthusiast, he was a less able one, and consequently, less likely to carry public opinion with him.

[1] June 1st, 1799.—Correspondence of C. J. Fox, vol. iii. page 165.

CHAPTER XIII.

Elevation of Lord Eldon to the Bench—Lord Wynford—Correspondence with Prince of Wales—Corn Scarcity—Laws against Forestalling and Regrating—Trial of Hadfield—Illness and Death of Hon. Lloyd Kenyon.

(1799—1800.)

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On the death of Sir James Eyre, Sir John Scott, the Attorney-General, was elevated to the Bench, and created a Peer by the title of Lord Eldon. On his appointment Lord Kenyon took the opportunity of saying, that from his experience of his ability he prophesied he would prove one of the most consummate judges that ever sat on the Bench. Lord Eldon's subsequent career fully justified his friend's partiality. If anything could be held to exclude him from the highest rank of Judges, it would be his unfortunate tendency to delay.

This inclination to doubt was early noticeable in his judicial career, and was mentioned to Lord Kenyon as a defect. 'It must cure itself,' was the reply. When he afterwards became Lord Chancellor, and the habit seemed to grow upon him, Lord Kenyon said, 'It was a sad pity it should do so, in his case especially, as the publick suffered greatly, and nineteen times out of twenty he was right.'

The affection and attachment of Lord Eldon for his

early patron was continued to his son, the second Lord Kenyon. CHAP. XIII. 1799.

'I should have no secrets from your father's son,' was the kindly greeting with which he bade him welcome to his house shortly after the Chief Justice's death.

Many years afterwards Lord Eldon, then in extreme old age, thus writes to his friend on the very subject we have been discussing:—

Lord Eldon to Lord Kenyon.

'14th Nov., 1835.

'My very dear Lord,—I ought long ago to have thanked you for the comfort I received from my daughter Elizabeth's reading a letter, which I think you sent, respecting the velocity, the comparative velocity, of Brougham and Eldon in Chancery and in Appeals. It is quite obvious that the number of decisions in a given time proves nothing of the sort, which Lord B. and the present Att^y suppose it to prove. In making a comparison, you must necessarily not merely advert to the number of decisions, but the nature of the cases in which the decisions were pronounced. There have been no such matters since my time as a Queen's trial, the trial of a Berkeley Peerage, or of the various questions in the great Roxburgh Peerages and Estates, in the last of which I think three days were employed in delivering my judgment—*cum multis aliis*. On a subject of this nature, however, my mind is at rest, though a very fidgety mind. I am mistaken if, after I am gone, the Chancery records do not prove I decided more than any of my predecessors

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in the same periods of time; Sir Lloyd Kenyon beat us all.'

From Lord Eldon to the Chief Justice are the following extracts:—

'I was under the necessity of attending at Weymouth, where I saw his Majesty, I think, extremely well, and found him giving the best admonition he could to his Chief Justice of the Common Pleas (Lord Alvanley), by urging him to attend to the example of his superior Chief Justice.

'I write to you instead of my Lady Kenyon, because I think it my duty to tell you that, as far as I could get information—and I think my information is accurate—the cause, and the only cause, of calling Parliament is to propose a Bill for further reducing the militia and augmenting the regulars by taking into those corps such militia men as choose to enter. The measure, in some views of it, is an important one.'

The Same to the Same.

'October 3rd, 1799.

'No news from Holland. I fear that there is great distress in the commercial part of this place, as well as Liverpool, &c. I am apprehensive that there will be more.'

The next alludes to the late Lord Wynford, afterwards Chief Justice of the Common Pleas. This eminent lawyer was many years at the bar without any opportunity of showing his ability. At length he was junior in an important case, when his leader

was suddenly attacked with the gout, and was unable to appear.

The attorney in charge of the case had so little confidence in Mr. Best, that he entreated him to throw up his brief in order that some better counsel might be employed. But the young man had a confidence in himself which encouraged him to persevere. The cause was heard before Lord Kenyon, who was so much struck with the ability exhibited by the young lawyer that at the conclusion of his speech he exclaimed, 'I never heard a cause better argued by so young a man.' Lord Wynford always attributed his rapid success after this time to the flattering testimony thus borne by the Chief Justice.

Lord Eldon's letter explains itself.

From Lord Eldon to Lord Kenyon.

'My dear Lord,—A gentleman at the bar, who, I believe, has practised at your lordship's court, viz., Mr. Best, has called upon me to intimate that, in consequence of being frequently indisposed with the gout, he is desirous of becoming a serjeant, and as I understand him, he says that your lordship intended to do me the honour to name his purpose to me, and has expressed a hope that I will concur with your lordship in mentioning to the Chancellor that he is not an unfit person. He seems to me to be affected with a disorder which I have suffered a little by, viz., a feverish inclination to get into that place in a great hurry, from whence he may sometimes say with as little of comfort as I do, "*Vestigia nulla retrorsum.*" With respect to myself, as far as any such matter depends upon me,

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when any gentleman comes from your court, the *sine quâ non* with me is your lordship's approbation of his conduct, and with that in his hand he would with me want no other introduction if he was seeking admission into the land of plenty instead of desiring to be numbered as one of a starving flock.'

The same year the well-known James Allan Park put his foot upon the first step of the ladder of promotion. He was one of the many successful lawyers who in after days attributed his success in great measure to the help and assistance of Lord Kenyon.

'My gratitude,' he writes, 'and thanks ever attend your lordship for the flattering testimony you have borne to my character as a lawyer, and what I prize infinitely higher, as a man.'[1]

The high reputation which Lord Kenyon enjoyed for honesty and integrity of purpose did not secure him from some vexatious criticism. His uncompromising endeavours to improve the tone of society by discouraging immorality and gaming raised him up many enemies. Some well-intentioned people thought that he presumed too much on his position as *custos morum*, and allowed too little for the so-called venial follies of the day.

One threat especially was not easily forgotten by the ladies.

Recommending that fashionable gaming establishments should be indicted as common nuisances, he said: 'If any such prosecutions are fairly brought before me, and the guilty parties are convicted, what-

[1] J. Allan Park to Lord Kenyon, 1799.

ever may be their rank or station in the country, though they may be the first ladies in the land, they shall certainly exhibit themselves in the pillory.' The next week Gilray had a large engraving representing two of the most fashionable lady gamesters in the pillory, and the Chief Justice mercilessly administering the scourge.

'I have just seen one of the prints of Ladies Buckinghamshire and Archer in the pillory, a very ridiculous good print if it will but deter them from deserving the reality of it. I hear there is another, in which Mr. Fox and your father are introduced, which is not so much approved.'[1]

The same uncompromising zeal in what he considered to be the right discharge of his duty, brought him this year into collision with an illustrious personage.

An application had been made to the magistrates of Middlesex for a licence to open a new gaming-house, and it was said that his Royal Highness the Prince of Wales was in favour of the application. The magistrates were in a dilemma, and in their perplexity applied to Lord Kenyon for assistance; asking him to allude to the subject in one of his charges, in such a manner that their hands might be strengthened, and they might be able to refuse the application. This was done 'in the course of a discussion on an annuity in which the name of Martindale, a bankrupt, occurred.

'Lord Kenyon asked if that was Mr. Martindale who some time ago kept a gaming-house.' Being answered in the affirmative, his lordship said he could not help uttering a few words relative to that person,

[1] Lady Kenyon to her sons.

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although it was not strictly regular for him to do so at that moment. He remembered that in a cause tried before him at the Guildhall, Mr. Martindale's certificate as a bankrupt was proved to be of no legal effect, because he had lost such sums of money by gaming as rendered such certificate void.

'He had heard it rumoured, and he had received information from persons whom he presumed to be actuated by virtuous motives, that spacious premises were preparing in which it was intended that this person should keep a subscription gaming-house under the patronage of a very high and illustrious personage. That he presumed could not be done without a licence: he trusted therefore that the magistrates who had the power of granting such licence, would consider attentively what their duty to the public was, before they would do anything so contrary to their duty as the granting such a licence would be.

'His lordship added, he was of opinion that of gaming-houses there were enough already.'

This temperate appeal called forth the angry letter which I subjoin:—

The Prince of Wales to Lord Kenyon.

'Carlton House, Nov. 15th, 1799.

'My Lord,—As I am thoroughly persuaded that in the administration of justice the very last thing that could enter your lordship's thoughts would be by any remark that may fall from your lips to unwarrantably prejudice the publick mind against an individual of any description whatever, I am confident that your lordship could never have used *the expression*, which in the

notion of every one so decidedly alludes to me, as stated in a morning paper of yesterday, which my Attorney-General has the honor to bear you. It is true that, from applications from many respectable quarters, I have been induced to assent to my name being placed among others as a member of a new Club to be instituted under the management of a Mr. Martindale, merely for the purpose of social intercourse, of which I never can object to be a promoter, and especially as it was represented to me, that the object of this institution was to enable his Trustees to render justice to various honorable and fair claimants. But if these were really your lordship's words (which I cannot for a moment suppose), give me leave to tell you that you have totally mistaken my character and turn, for of all men universally known to have the least predilection to play, I am perhaps the very man in the world who stands the strongest and the most proverbially so upon that point. I shall not trouble your lordship further upon this strange circumstance, as Mr. Graham will convey to you my feelings and sentiments upon it, and I am well persuaded that your own knowledge of the world, as well as the urgency of the case, will suggest to you the propriety of taking such measures in consequence as are requisite, and ought to be adopted.

'I have the honor to be, my Lord,

'Yours, &c. &c. &c.

'GEORGE P.'

It must have puzzled even the astute old lawyer to answer this clever letter.

The reply delivered to Mr. Graham was as follows:—

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'In the discharge of my judicial office I have for some years laboured to put an end to Gaming. Many inferior offenders have been brought to justice; but I am sorry to say that no effectual prosecutions have been hitherto commenced against the houses in the neighbourhood of St. James's, where such examples are set to the lower orders as are a great scandal to the country.

'Within this fortnight I read a paragraph in the *Times*, stating that the house formerly occupied by Lord Buckinghamshire in Bond S^t^ was preparing to be kept as a Club-house by Mr. Martindale, under the patronage of the Prince of Wales; and the paper proceeded to state, that there were already gaming-houses enough in S^t^ James S^t^. I have not the newspaper in my possession and do not affect to state the words.

'I received a few days afterwards a letter (without a name, but apparently coming from no common hand) stating the above facts, and urging it as my duty to take some notice of this as likely to operate against magistrates granting a licence, and intimating that some of the magistrates would not grant a licence if my sentiments were known to be against it. But every Commission of the Peace, which has many names in it, may have some corrupt and profligate members. I therefore considered what to do, and it was not without most respectable concurrence that I stated the fact publickly, in the hope it might have a good effect and prevent any licence from being obtained.

'I have seen the paragraph in the paper sent me and in the *Times*—what passed is stated with some difference—I cannot say which is more exact.

'I will not disavow what I have done—and upon reflection I hope his Royal Highness will find nothing in my conduct to disapprove. If there be scandal in the statement, I am not the author of it; I barely stated the paragraph that appeared, in order to account for my giving an intimation to the magistrates. Of Mr. Martindale I know nothing but what has appeared before me judicially. He has stated before me, on his oath, that he kept a house where gaming was carried on to a great extent—that he advanced money for the purposes of play to the amount of at least several hundred pounds.

'By these means his creditors have been defrauded, as at least one instance has appeared, where the person who borrowed the money has publickly been defended against the payment of his notes, upon the ground that the money was lost at play, though Martindale swore that the same person was occasionally a winner, and received and kept his winnings.

'It will occur to every man who can distinguish right from wrong, and who considers the laws respecting the licensing of publick houses, that it would be criminal in any justices to license a man whose conduct as the keeper of a publick house had been what I have stated, and which I state *from his own oath*. It further appeared on oath that Martindale has lost money at play to an amount, and under circumstances, that put an end to his certificate.

'His Majesty, by his proclamation, has called upon the magistracy of the country to use their endeavours to suppress gaming. The duties of my office require it from me. I have attempted to do it. There is a quarter

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to which I feel more gratitude than I shall ever find words to express. I receive constant approbation and the most encouraging kindness from that quarter. In what I said in Court, I barely stated existing and most notorious facts, and in doing so, I had not the most distant thought of wounding the feelings of the Prince of Wales; fairly represented, it could not have had that effect; if it has been made use of to produce that effect, I am truly sorry for it, and consider myself as so far unfortunate.

'I heartily wish that his Royal Highness was fairly informed of my judicial conduct, and would approve of it, if it be fit for his approbation. I am not indifferent to the favourable opinion of great and good men. The history of this country shews that the firm conduct of one of my predecessors extorted the approbation of a Prince of Wales, and perhaps that act of condescension was not the least brilliant part of that renowned character.

'I would throw myself at the Prince's feet if I had wilfully offended him; but I owe it to myself and the publick not to disgrace my character by acknowledging baseness I am a stranger to.

'Upon a review of my conduct, I ask for, and, may I say without offence, I expect his approbation. It will gratify me, and I hope not disgrace him. I have had abundant proof that the conscientious discharge of my duty has created me many enemies, but not one hitherto whom I would wish to call my friend.'

Lord Kenyon at the same time addressed a letter direct to the Prince, which I subjoin:—

'*Lord Kenyon to H.R.H. the Prince of Wales.*

'20th Nov., 1799.

'Sir,—I have been under some difficulties in what manner I ought to act in consequence of the letter your Royal Highness condescended to honour me with. I was apprehensive if I wrote immediately to you it might be deemed too obtrusive, and therefore I communicated what I had to say to your Attorney-General in writing.

'Knowing that I feel all respect for every branch of my Sovereign's family, I hope that in presuming to send this letter I do not trespass improperly.

'I thought it my duty to recommend to the magistrates not to grant a licence to Mr. Martindale, considering what has passed respecting him before me judicially. This is my settled opinion at present, and this I wished to impress. I do not recollect the expression I used, but to assist my imperfect memory I have applied to the better recollection of the most eminent practisers in the Court, and they assure me that I used no word which could be deemed offensive to your Royal Highness. I can only add that I am confident that I meant nothing offensive to you. Those know little of my sentiments who conceive me capable of using language tending to expose the higher orders of the State to censure or light observations.

'May I presume to hope that your Royal Highness will pardon this trouble?

'I am, with great respect,

'Your Royal Highness's

'Most obedient humble servant,

'KENYON.'

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Lord Kenyon was not a ready writer. One of his friends once bantered him for allowing Romney to paint him with a pen between his fingers. 'You never use it,' he added.

It would have been difficult, however, for the most practised penman to have composed a better defence of his conduct. In calm and dignified language, he uncompromisingly affirms the justice and necessity of his act, and while treating his illustrious correspondent with all the respect due to his position, he refuses to disavow his own share in the transaction, but claims the support of all well-disposed subjects in the execution of his duty.

The Prince doubtless accepted the explanation in the conciliatory spirit in which it was offered. At any rate, no further communication seems to have taken place on the subject.

The following year his conduct on the bench was again the subject of some comment. He had taken a very decided line in actions for crim. con., and had generally succeeded in inducing juries to mark their sense of the lax tone of morality then prevalent, by giving large damages. In some cases it would appear that Lord Kenyon had rather overstepped his duty as *custos morum*, and had allowed his love for morality to get the better of his judicial prudence.

Lord Carlisle, in his speech on the Adultery Bill in the House of Lords, animadverted somewhat strongly on these charges, sarcastically sneering at 'the legal monks' who presided in the courts of justice, 'ignorant,' he said, 'of human nature and the ways of men.' Lord Kenyon might well have afforded to have left

these observations unnoticed: but they rankled in his mind, and in subsequent trials he complained, somewhat querulously, of the attacks made upon him. In the case of Taylor *v.* Birdwood, in the Court of King's Bench, addressing the jury, he said: 'Gentlemen, we have had a great many causes of this kind, in the decision of which, I believe, some of you have assisted, and before you decided them you took into your consideration an enlarged view of the affairs of the world; and yet somebody or other, at least some publications, tell us that the Judges (whether the observation extends to Juries I know not) are legal monks; that they know nothing of the world; that they are shut out from the world, and bring along with them crude opinions of their own, by which they are guided in Courts of Justice. What is the world? If a knowledge of the world is to be got by sauntering like young men of fashion about Bond Street, if it is to be obtained at gaming-tables, or on the course at Newmarket, I disavow being acquainted with it. But surely something of that which may truly be called a knowledge of the world, *quicquid agunt homines*, may be attained in Courts of Justice, at least I believe so. There you hear the various transactions and affairs of men of all ranks in the community fully discussed, and their differences decided under the sanctions of Religion, Morality, and Justice.'

The retort, which seems a very fair one, was too pointed to escape notice, and Lord Carlisle actually threatened to bring the Chief Justice before the House of Lords for a breach of privilege. The motion was allowed to remain on the notice book of the House till

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the evening when it should have been made, when it was withdrawn.

A very stedfast friend of Lord Kenyon's thus writes to him on the subject:—

Marquis Townshend[1] *to Lord Kenyon.*

'Weymouth St., 18th June, 1800.

'My Lord,—I trust you will have the goodness to excuse this interruption, as I cannot refuse myself the pleasure of assuring your lordship how highly I was gratified yesterday in our House of Parliament by the justice and esteem which was expressed for your lordship's character and public service, and concern also for the cause of your lordship's leaving town.

'Lord Carlisle's motion seemed only to effect a retreat, and it was attended with such observations upon the irreverence of persons of high merit in Church as well as State, as must have been a serious warning to calumniators without doors and within, had not the House been cleared before the business began. . . . .

'I remain, with truest esteem, your Lordship's

'Obliged and faithful humble servant,

'TOWNSHEND.'

The following is a handsome testimony from the Bishop of London to the Chief Justice's efforts to obtain a much needed reform in the Church:—

The Bishop of London (Porteus) to Lord Kenyon.

'Fulham, May 13th, 1799.

'My dear Lord,—Before I depart for my visitation in Essex, which I do this morning, I cannot forbear

[1] George, 1st Marquis, a Field Marshal in the army. Served at Dettingen, Fontenoy, &c., obt. 1807.

expressing to your lordship the high sense I entertain of your goodness and friendship towards me, in the honourable mention you were pleased to make of me from the Bench a few days ago. *Laudari a laudato viro* is always a grateful circumstance, and there is no one whose approbation I am more ambitious of obtaining than your lordship's. I must also take this opportunity of returning you my sincere thanks for the essential service you have done to religion and to the Church of England by the decided opinion you gave at the same time, with so much dignity and solemnity, on the subject of residence. That opinion comes with so much weight from a great and upright Judge, no less distinguished by his zeal for the interests of morality and religion than by his talents and eminence in his profession, that I trust it will have a most powerful influence on the minds of the clergy, and give energy and effect to the efforts of those Bishops that are endeavouring (too often in vain) to enforce on the parochial ministers under their care that important, but too much neglected duty of residing in their benefices.

I have the honour to be, with the truest veneration and respect,

'Y^r^ Lordship's, &c. &c.

'B. LONDON.'

During the year 1800 the scarcity consequent upon the recent bad harvests assumed alarming proportions. To a later generation, which recalls with a thrill of pain the sufferings of the Irish during the potato famine, and the prostration of Lancashire during the cotton

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distress, it will perhaps seem doubtful whether there really was the same extent of suffering prevalent at the commencement of the century. It must be remembered, however, that out of much smaller resources the country had then to carry on an expensive foreign war, while the foreign ports were for the most part closed to us for the importation of corn.

Private charity, which to a large extent mitigated the sufferings of the people in Ireland and Lancashire, had not yet the means adequate to the occasion, and emigration, which has recently helped us in times of distress, was then but feebly encouraged.

How little the proper remedies were understood, may be amply gathered from the correspondence of the day.

Of all the great statesmen then living, Lord Grenville and Mr. Fox alone seem to have at all thoroughly understood the principles of Free Trade. Erskine, in other respects as enlightened and advanced a politician as any of his contemporaries, was an advocate for strong repressive measures: while Pitt, as Lord Stanhope has pointed out, was in favour of the principle of the Corn Laws.[1]

The remedial measures adopted consisted principally of ingenious contrivances for limiting the consumption of bread. In the House of Lords, the Archbishop of Canterbury endeavoured to limit the quantity of bread to be consumed in each family to one quartern loaf a week for each person. Bakers were to be prohibited from selling bread until it had been baked twenty-four hours. Distillers were prohibited for a limited time

[1] Lord Stanhope's Life of Pitt, vol. iii. pages 247 *et seq.*

from using corn in their production of spirits. Meanwhile private individuals endeavoured to mitigate the distress in their own districts. For several years Lord Kenyon was in the habit of retailing flour and other provisions at a minimum price, an example which was largely followed.

The extent to which the pressure was felt may be imagined from the following recipes, which were largely circulated at the time:—

VAST SAVING OF BREAD, OR EVERY HONEST AND INDUSTRIOUS MAN HIS OWN COOK.

Experiments made by James Johnston, M.D., Physician of the Royal Hospital at Haslar, at the request of the Hon. Vice-Admiral William Waldegrave:

First Trial.	*s.*	*d.*
Beef Stickings, 1 lb.	0	4
Scotch Barley, 1 lb.	0	4
Potatoes, 6 lb.	0	3
Onions	0	0½
Pepper and Salt	0	0½
Bacon, 4 ozs.	0	2
Produce, 6 quarts	1	2

&c. &c. &c.

But the policy which was most controverted was the enforcement of the dormant laws against forestalling and regrating. Lord Kenyon was chiefly instrumental in carrying out this policy. In his charges to the juries at this time, he strongly rebuked the greed of the monopolists, and urged their severe punishment, to deter others from following their example.

The policy was highly popular with the people, though it must be owned it did not evince a very accurate knowledge of the principles of political economy.

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The grounds upon which Lord Kenyon founded his opinion, are stated in two judgments—Waddington's Case, and Rex *v.* Rusby.

Lord Kenyon—— . . . . 'This is a most momentous question, and it well behoves us to be sure of every step we take. Whatever measures the legislature in their wisdom may think proper to adopt, in order as far as possible to alleviate the present pressure, and prevent its recurrence, we, in the meantime, must act upon the law as it is; such as we find it transmitted to us by the most reverend sages of the law. It has been said that if practices, such as those with which the defendant stands charged, are to be deemed criminal and punishable, the metropolis would be starved, as it could not be supplied by any other means. I by no means subscribe to that position. I know not whether it be supplied from day to day, from week to week, or how otherwise; but this is to me evident, that in whatever manner the supply is made, if a number of rich persons are to buy up the whole or a considerable part of the produce from whence such supply is derived, in order to make their own private and exorbitant advantage of it, to the public detriment, it will be found to be an evil of the greatest magnitude. . . . . Here is a person going into the market who deals in a certain commodity. If he went there for the purpose of making his purchases in the fair course of dealing, with a view of afterwards dispersing the commodity, which he collected in proportion to the wants and convenience of the public, whatever profit accrues to him from the transaction, no blame is imputable to him. On the contrary, if the

whole of his conduct shews plainly that he did not make his purchases in the market with this view, but that his traffic there was carried on with a view to enhance the price of the commodity, to deprive the people of their ordinary subsistence, or else to compel them to purchase it at an exorbitant price; who can deny that this is an offence of the greatest magnitude? It was the peculiar policy of this system of laws to provide for the wants of the poor labouring class of the country. If humanity alone cannot operate to this end, interest and policy must compel our attention to it.'[1] . . . .

In charging the jury on Rusby's trial, Lord Kenyon says: 'Though in a state of society some must have greater luxuries and comforts than others, yet all should have the necessaries of life: and if the poor man cannot exist, in vain may the rich look for happiness or prosperity. The legislature is never so well employed as when they look to the interests of those who are at a distance from them in the ranks of society. It is their duty to do so; religion calls for it; humanity calls for it; and if there are hearts who are not awake to either of those feelings, their own interests would dictate it. The law has not been disputed, for though in an evil hour all the statutes which had been existing above a century, were, at one blow, repealed, yet, thank God, the provisions of the common law were not destroyed. . . . . I wish Dr. Adam Smith had lived to hear the evidence of to-day, and then he would have seen whether such an offence exists, and whether it is to be dreaded. If

[1] Rex. v. Waddington, 1 East. pp. 157, 158.

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he had been told that cattle and corn were brought to market, and then bought by a man whose purse happened to be longer than his neighbours', so that the poor man who walks the street and earns his daily bread by his daily labour could get none but through his hands, and at the price he chose to demand—that it had been raised 3*d*., 6*d*., 9*d*., 1*s*., 2*s*. and more a quarter on the same day, would he have said there was no danger from such an offence?'

We may confidently imagine what Adam Smith's answer would have been to these fallacies; but the motives of the Judge were as honourable as his political economy was faulty: and he hardly deserves the condemnation which Lord Holland has passed upon him.[1]

After all, he was backed up and supported by such men as Erskine and the Duke of Buckingham, and sustained in his error by the approbation of the public. 'I remember the time,' says Sydney Smith, 'when ten judges out of twelve laid down this doctrine in their charges.'

The public feeling on the subject is amusingly demonstrated in the following:—

THE FORESTALLERS IN THE DUMPS.

A New Song.

Tune.—The Roast Beef of Old England.

Come neighbours attend now, and listen awhile.
The poor of Old England has reason to smile.
Since some rogues are found out, who long did us beguile.
Success to Lord Kenyon for ever,
Who forestalling will shortly put down.
The 4th of July, Mr. Rusby, that day,
That *honest* corn factor was found guilty they say,
For regrating and selling corn both on one day.
&c. &c. &c.
Oh sing, Oh the roast beef of Old England,
Good Lord Kenyon and English roast beef.

[1] Lord Holland's Memoirs, p. 169.

The following are the letters alluded to from Mr. Erskine and the Marquis of Buckingham :—

From the Hon. Thomas Erskine to Lord Kenyon.

(Extract.)

'Oct. 15th, 1800.

'You are perfectly right in the view you have taken of the evils arising from the high prices of provisions, and of the law which visits and corrects them; I have looked at the subject since we met, and am sure of what I say. The war undoubtedly, and the vast circulation of paper, encreases the public suffering; but depend upon it the whole system of trade in provisions has been entirely changed. There are now only great landholders (the farmers), great merchants with great capital, in lines which were not formerly considered as the occupations of merchants.

'They sweep the whole country before them in the purchase of the necessaries of life, and they command the markets.

'I have talked with Fox, who thinks all this is visionary (taught, I suppose, in other days by Burke), but who has not in the least convinced me. I have not found a case almost in which I have been consulted that the common law will not reach, and perhaps *that* is one of the evils attending the repeal of the statutes; they served at once as helps, and as qualifications of the common law in cases where its principles might have reached too far.'

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The Marquis of Buckingham to Lord Kenyon.

'Stowe, July 8th, 1800.

'My dear Lord,—Amongst the various proceedings of the Court of King's Bench, in which my feelings have been warmly interested by the truly virtuous and constitutional administration of the powers entrusted to your lordship, and for which the country can never sufficiently thank you, I have attended with particular interest to the issue of the prosecution for forestalling and regrating, as an offence at common law, wholly unconnected with the statute law so unfortunately repealed. In the course of the scarcity which was so severely felt in this country three years ago, it became necessary for me (officially) to employ our yeoman-cavalry in suppressing a very alarming attempt on the waggons conveying grain in the large hundred of Newport-Pagnell, and to call upon Government to prosecute eleven offenders for a riot, whose lives would have been forfeited, if they had been prosecuted for the heavy offence of plundering the corn-waggons; and having satisfied myself in the course of those trials (at our quarter sessions) that much of the publick indignation, as well as of the artificial price of the grain then bought up, arose from the speculations of a very large corn-factor at Olney, who was stated to have forestalled and regrated to a large amount, and who owned these waggons, I persuaded two excellent magistrates to watch his conduct; and in the course of a month after the trial, he was detected in regrating grain in the market at Olney, and he was prosecuted under my direction (and by a

county subscription) for this offence, as a misdemeanour at common law, at our quarter sessions. He pleaded guilty, but had the assistance of counsel, who was heard in extenuation of his offence. The magistrates (near twenty in number) adjudged him to pay a fine of two hundred pounds, and to suffer fourteen days' imprisonment; the latter part of the punishment was calculated to shew the powers of the Court in such a case, rather than to operate as a severe part of his judgement. This prosecution and the result of it was much canvassed at the time, but the consequence of it was an immediate and perceptible fall in our markets compared with those of the neighbouring counties; and I am persuaded that it has operated much on the minds of our lower people, who during the present calamity have not shewn the slightest discontent. But as I have frequently been obliged to argue with some whose opinions have great weight with me, and who doubted not only the policy, but the law of our proceedings in that case, I have paused upon one or two opportunities of making similar examples. Nothing of this sort is now pending; and I have therefore no difficulty in asking your lordship, from the humane and excellent doctrines which you delivered on the late prosecution, whether I understand you rightly (as reported in the newspapers), that you have no doubt of this offence being indictable at common law and consequently triable at the quarter sessions, in the way in which we proceeded to convict and to punish in that case of the King *v.* Battams?

'Excuse this trouble, my dear lord; you owe it to the veneration I entertain for your legal cha-

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racter and conduct, and to the unbounded personal esteem and regard with which I have the honour to be

'Your very faithful and obedient servant,

'NUGENT BUCKINGHAM.'

It was in the early part of this year that the loyal population of London was startled by an attempt which was made to assassinate the King at the theatre. His Majesty had advanced to the front of his box to make his acknowledgments to the audience, when one Hadfield leaped upon a bench and fired a pistol at the King, who most fortunately escaped, though the slugs from the pistol struck the walls of the box all round him. George the Third on this, as on other occasions, manifested a high degree of coolness and personal courage.

'On hearing the report of the pistol he retired a pace or two, stopped and stood firmly for an instant, then came forward to the front of the box, put his opēra glass to his eye, and looked around the house without the smallest appearance of alarm or discomposure. Hadfield meanwhile had been seized by the audience, and dragged over the spikes of the orchestra into the music-room.'[1]

He was afterwards tried before Lord Kenyon, when he was clearly proved insane, and was ordered to be kept in confinement for the rest of his life. Mr. Erskine's speech on his defence is considered by Lord Campbell to have been his *chef-d'œuvre* at the bar.

Lord Kenyon's career was now to be interrupted by

[1] Reminiscences of Michael Kelly, quoted in Jesse's Memoirs of George III. vol. iii. p. 235.

a very melancholy episode. We have seen how deep were his affections in his domestic relations. His sons were just growing up to manhood, and he promised himself from their society all the consolations which his declining years began to require.

To the eldest especially he was devotedly attached. He was a most promising youth, and had already given signs of a singularly ripe and intelligent mind, when he fell into a decline and died. The Chief Justice was completely overborne by the calamity. While gazing into the new-made grave, he exclaimed, 'It is large enough for both.'

For a long time he was quite unequal to his duties; and there is no doubt that his sorrow materially hastened his own decay. Retiring into the country he shut himself up at Gredington and refused to be comforted. He even talked of resigning his office, and was with difficulty prevented from doing so, by the persuasions of Erskine and other friends.

The kind offices of his friends were unremitting. The King's kindness, and that of the Princes' during this sad trial is gratefully recorded by him. Of a large collection of letters from almost all the eminent men of his profession I must only insert the following, which seem to be especially creditable to the judgment and feeling of the writers:—

Sir John Mitford to Lord Kenyon.

'Lincoln's Inn, Sepbr. 29, 1800.

'My Lord,—Persuaded that a letter from an old friend (and I hope I may be permitted to consider myself as an old friend) tends rather to soothe than agitate

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a troubled mind, I have ventured, after some hesitation, to address your lordship on the melancholy event which you must long deplore. The loss of a son must be felt by a parent; the loss of a beloved and deserving son must be severely felt; and I doubt not that Lady Kenyon and your lordship dwell with fond remembrance upon his past life. Indulgence in grief I believe to be the surest remedy for great affliction, if that indulgence is not carried too far. A mind chastened by reflexion, and sustained by a just sense of religious duty, will know how far to indulge, and when to restrain grief. I need not fear, therefore, that your lordship and Lady Kenyon, with a sense of the weight of your affliction, will lose sight of the duties you owe to your family and to yourselves. That you must suffer much, that all your friends must suffer, I cannot doubt; but I trust that time will soften the pang of grief into a pleasing remembrance of departed worth, and you will exert yourselves to prevent the force of that remembrance bearing too much on your minds.

'Doubting whether in disburthening my own mind I may not have thrown a weight on your lordship's, but conscious that under afflictions I have always found some relief in the attention of others, I hope this will be received by your lordship as the assurance of the very sincere respect and esteem, for yourself and Lady Kenyon, with which I have the honour to be, my Lord,

'Your Lordship's very

'Faithful, humble servant

'JOHN MITFORD.'

The Same to the Same.

'Lincoln's Inn, Octbr. 6th, 1800.

'My Lord,—It is impossible for a man of feeling to bear the loss of a child without affliction, and the loss of such a son as your letter describes, and as every one knows that which you have lost to have been, must indeed be a severe blow. Time, however, will I trust soften affliction into that fond remembrance which we cannot indulge in without sorrow, but which may be borne without depression. A mind tutored by religion must feel it a duty to bear up against grief, a duty which a man owes to his family, to himself, and to that Being whose chastening he suffers. I trust your lordship will regain your calmness; and the reflection that the sight of your continual sorrow must weigh heavily on the mind of Lady Kenyon will, I am sure, operate to give you fresh strength for the struggle you must endure. Your two sons also, by their filial attention to their parents, shew that they have demands upon you which you cannot refuse to answer. Everything indeed which can occur to you: the merit of your lost son, the dutiful affection of the survivors, and above all the excellence of the partner of your grief, must compel you to gather strength to your mind; and tho' you feel your loss as a man, to bear it also as a man, and as a man deeply impressed with a sense of his duty to God.

'Pardon, my lord, an address, perhaps too free, but which some expressions in your letter, and an anxious wish for the welfare of yourself and your family, have drawn from me. I do not call upon you to forget your sorrow; I know that is impossible, but I call on you

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to bear it. When the afflicted mind of Lady Kenyon will bear the remembrance of an old friend, I hope your lordship will have the goodness to mention me to her, as well as to your sons.

'With my sincere respect and esteem, I have the honour to be, my Lord,

'Your Lordship's faithful humble servant,

'JOHN MITFORD.'

The Honourable Thomas Erskine to Lord Kenyon.

'Hampstead, Oct. 15, 1800.

'My dear Lord,—It was not from want of sympathy or affection (as I am persuaded you will believe) that I have not written to you sooner; I have thought of you very often, and I am quite sure with as much feeling as the warmest of your friends. Nearly about the same time I suffered a similar misfortune, and I learned from it that it is not until after some time that the solicitude of friendship is much better than intrusion. It would be words thrown away to remind *you* that God is wiser than man, and that his benevolence is equal to his wisdom. One day or other (tho' not in this mortal period) you will understand why you have suffered so much, and will be satisfied it was right. I have heard of some desponding expressions which fell from you *most naturally* in the moment of affliction, which pointed towards retirement. You may remember that you consulted me many years ago, before you became Chief Justice, when I was less your friend, because I knew you less, and when I was less capable from years and experience to advise you.

'I now give my advice unasked—*Let nothing (whilst*

your health remains) induce you to quit your station. The sudden transition from great activity to retirement, unless as vigour ebbs, and calls naturally for ease, ever has been and ever will be mortal to mind and body.

. . . . . .

'We have always differed, my dear lord, upon political questions, and above all upon that grand one which, I am afraid, if not attended to, will materially affect us all—I mean this ruinous War; but I have always been steadily your friend, from a thorough conviction that you act from your conscience and feelings in all things, and from the recollection that you have never ceased to be mine.

'I have the honour to be,

'My dear Lord,

'Yr. faithful and

'Most obedient servant,

'T. Erskine.'

CHAPTER XIV.

Change of Ministry—Lord Eldon Lord Chancellor—Illness and Death of Lord Kenyon—Conclusion.

(1801—1802.)

CHAP. XIV. 1801.

THE year 1801 witnessed the resignation of Mr. Pitt, the King's temporary derangement, and the installation of the Addington Ministry. Lord Kenyon, as might be expected, sided warmly with the King, in his controversy with Pitt, and was frequently consulted by him both before and after his illness.

'With his Majesty,' records the Diary (Febry. 15th, 1801), 'by his command, at the Queen's House. Had a long most confidential conversation with him about the resignation of Mr. Pitt, and the other Ministers, and as to their successors. He gave me Mr. Pitt's letters and his answers,' &c. &c.

'March 31.—Lord Thurlow paid us a morning visit for two hours. Pretty well, but splenetick in politics.—April 2.—Lord Eldon with me about public affairs, the office of Chancellor, &c.'

Lord Kenyon appears to have sided with the King merely on personal grounds. Knowing how insuperable an objection he had to the Catholic claims, he thought Pitt wrong in pressing them, when he knew it could lead to no good result: and this feeling was strengthened by the King's illness, which was caused

no doubt principally by the agitation of mind consequent upon the Ministerial crisis.

Two letters from Lord Eldon have reference to the events of this period:—

Lord Eldon to Lord Kenyon.

'Common Pleas, 14th Feb., 1801.

'Dear Lord Kenyon,—I feel a good deal of uneasiness to protect myself against the possibility of your lordship's thinking that I am wanting in the respect and duty which I owe to you, and which I can truly say has ever been accompanied with the most grateful and affectionate regard. May I therefore be allowed to assure you that whatever other persons may have thought it becoming to mention in conversation respecting themselves or me, nothing has passed yet with respect to me, that warrants me, consistently with propriety, in making that communication to you, which it would be my duty to make, as I wish to make it to you, whenever the matter is settled the one way or the other?

'I can say no more than that I may be compelled to quit this little Court, in which I should have wished to end my days.'

'Your obliged and faithful

'Friend and servt,

'ELDON.'

From Lord Eldon to Lord Kenyon.

'My dear Lord,—I copy for your private reading Mr. Addington's private note of six o'clock last night.

'Yours faithfully,

'ELDON.

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'The account is certainly more favourable and encouraging than that of yesterday.

'Well-grounded hopes are entertained of a speedy recovery, and there are no doubts of a happy termination of the complaint.'

The change of Ministry gave the Great Seal to Lord Eldon, and Sir R. Pepper Arden succeeded him at the Common Pleas, with the title of Lord Alvanley.

Lord Kenyon had thus lived to see almost all his early friends in positions of the highest eminence.

Erskine alone remained without promotion, and before he attained patrician honours Lord Kenyon himself was removed from the scene.

A further proof of the King's confidence was this year given him by his re-appointment as one of the trustees of certain property which his Majesty had purchased. Lord Eldon, who was associated with him, thus tenders their united thanks to his Majesty:—

From Lord Eldon to the King.

'May 5th, 1801, 9 A.M.

'The Lord Chancellor, tendering to your Majesty his most humble duty, offers also Lord Kenyon's, Sir John Mitford's and his own most grateful acknowledgments for the testimony of regard which they learn from the communication, transmitted through Mr. Strong, that it is your Majesty's gracious purpose to bestow by appointing them trustees of part of your Majesty's property. They all hope that your Majesty will find in a conscientious discharge of their duty as such, a proof of their earnest anxiety to manifest their gratitude.

'Your Majesty's Chancellor presumes to add, that, highly as he should have thought himself honoured, under any circumstances, by such a testimony of your Majesty's regard, he cannot but feel particular satisfaction in being associated in this trust with persons, whose advice and assistance he knows to be highly valuable: with one, from whom in the course of his professional life he has received marks of kindness almost parental; and with another, with whom he has long lived in habits of brotherly regard; and of both of whom he can most truly represent to your Majesty that in private life, as well as in public, their conduct has been uniformly and strongly marked by a dutiful, anxious, affectionate, and loyal attachment to your Majesty.

'ELDON.'

The matter is thus alluded to in the Diary: —

'*May 4th.*—Message from the King to desire I would be trustee for him with the Chancellor and the Speaker on his purchase of an estate at Kew from Lady Essex.

'*May 25th.*—The King and Queen called. Most gracious. Called me his friend, and told the Queen he should make me a trustee for her.'

Lord Kenyon had always been a temperate man, and to this he probably owed his general immunity from illness up to this time.

But the melancholy event of the previous year had

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undermined his constitution, and in the summer of 1801 it became evident that he was seriously indisposed. 'I remember well,' writes Mr. Adolphus, the historian, some years later to the second Lord Kenyon, 'the autumn of 1801, when the failure of the Lord Chief Justice's health took place. I was on a visit to Lord Sheffield's at his seat in Sussex at the time of the Summer Assizes, when Lord Kenyon passed his Saturday and Sunday there. Mr. Justice Grose and Sir Elijah Impey came on Sunday. The alteration in Lord Kenyon's health was observed and regretted by all, but his cheerfulness and presence of mind gave us no reason to apprehend the event which so soon followed.'[1]

His duties meanwhile became burdensome to him. 'I have had a very oppressive circuit,' he writes to his son, 'almost too much for an old man, strong neither in mind or body.'

'I have had an unusually large entry of causes here,' he writes from Maidstone, 'and all were tried; but by beginning pretty early yesterday morning I had got through all of them, I hope and believe to the satisfaction of the country, before dinner. Grose has not yet finished, but I hope may finish so as to leave this place before noon. The hops and corn promise most extremely well indeed. They say hops will be very cheap, and that the speculators will suffer much. It is said a dealer in this town will lose by his monopolising scheme from twenty thousand to forty thousand pounds.

[1] J. Adolphus to Lord Kenyon.

Waddington, I understand, is very unpopular now, and likely to feel very reduced circumstances. I pray God to preserve and bless you.

'Yours most affectionately,

'K.'

30*th July*, 1801.

He was now desirous to resign his office, but was persuaded to hold it on, thinking to retire after another circuit unless he was restored to health. 'I will receive no pension,' he added, 'when I can no longer serve the public.'

He rallied for a time, and came up to London at the commencement of Term to perform his duties.

He had hardly taken his seat, when he was seized with serious symptoms, and was obliged to give up attendance. From this time he gradually became worse: he was, however, able to attend the Queen's drawing-room at the beginning of the new year; and even sat for one day at the Guildhall. After this he went to Bath to try the effect of the waters, and while there his strength rapidly gave way. He died on the 4th of April, in the 70th year of his age. He met his end with the calmness and fortitude of a Christian whose life had been spent in doing his duty to God and man, and with a cheerful thankfulness for the many blessings he had enjoyed.

He was buried in the parish Church at Hanmer, where a handsome mural monument records his virtues.

The inscription runs as follows:—

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1802.

SACRED TO THE MEMORY
OF
LLOYD, LORD KENYON,
Baron of Gredington, in the County of Flint,
Lord Chief Justice of England.

In the execution of his high and important magistracy,
He was eminently distinguished
For learning, discernment, firmness, and integrity;
Not only was he qualified
To administer the laws with fidelity, promptitude, and vigour,
But as the guardian of the public morals,
To instruct, admonish, and reform.
For
The authority of his station, great and weighty in itself,
Was strengthened, graced, and dignified
By the religious simplicity of his own character
And
The untainted purity of his habitual conduct.
Dear to his family,
In every office and relation of domestic life,
He has left a name
To which they look up with affectionate and honest pride,
And which his country will remember
With gratitude and veneration,
So long as her happiness and her glory
Shall continue to depend
On the great and united principles
of
Religion, Law, and Order.
Born Oct. 5, 1732. O.S.
Died April 4, 1802.

Lord Kenyon was succeeded in his title and estates by his eldest surviving son, George; well known for many years as an earnest champion of the great cause of education, and a strenuous supporter of Tory principles.

I have endeavoured in the foregoing pages to portray the character of Lord Kenyon: a very few remarks will therefore suffice in conclusion.

I have already intimated that in my opinion his

claim to distinction must rest mainly if not entirely upon his *professional* success. CHAP. XIV. 1802.

A great statesman he certainly was not: he disliked politics, and avoided them as much as possible. Inflexibly honest, he was biassed by no party considerations, but acted on all occasions as he believed to be most for the interest of his Sovereign and his country. If on one or two occasions he preferred the interest of the former to that of the latter, it must be attributed to the personal intimacy which so long subsisted between him and the King. But it will be remembered that in the important question of the Coronation Oath, he endeavoured honestly to disabuse the King of his error; though unfortunately without effect.

I have already noticed Lord Kenyon's especial merits as a lawyer before he was elevated to the Bench.

But it is as a Common Law Judge that he will ever most favourably be remembered: and I doubt whether in the long roll of eminent men, who have dignified the ermine, there has ever been a more able, honest, or disinterested Judge.

There have certainly been men who, to perhaps equal honesty and firmness of purpose, have added greater dignity of manner, men gifted with more perspicuity of language, more general affability of demeanour, but I know of none who in knowledge of Law, and in the fair and equal administration of it, can be held to have surpassed Lord Kenyon. To this most of his successors have borne testimony.

'I apprehend,' writes Lord Eldon, 'everybody practising in this Court knows it to be my opinion that

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your father was the only Judge I ever knew who was so constantly right that he could act upon the principle that he was always so. Those in Westminster Hall, who never knew your father, have learnt *from me*, I think, to venerate his name and memory, and those who knew him, to my testimony can add the evidence of their own knowledge.' [1]

'I have never omitted,' writes Lord Erskine, acknowledging the receipt of a print of the Chief Justice from his son, 'any occasion in public or private life to speak of your father as one of the greatest Judges as well as one of the honestest men that ever flourished in this country.' [2]

In a similar strain are letters from Lord Denman, Lord Ellenborough, and others, which it would be superfluous to quote. I will only add one extract from the judgment of a living authority: 'When,' said Sir W. Page Wood, now Lord Hatherley, 'a point has been decided by such a Judge as Lord Kenyon, and the decision followed by such a Judge as Lord Eldon, I cannot conceive a case more completely bound by authority. Considering by whom the first case was decided, it is scarcely necessary to say that, though much might be urged against it, still there is much to be said also in favour of Lord Kenyon's view.' [3]

The strongest proof, after all, of Lord Kenyon's merits, is the respect with which his judgments are regarded at the present day. No Judge, who has presided for so long a period in the Court of King's Bench, has been

[1] Lord Eldon to 2nd Lord Kenyon.
[2] Lord Erskine to 2nd Lord Kenyon, 1816.
[3] Reports, Johnson and Hemming, vol. i. page 430.

so rarely overruled. His decisions were chiefly extempore—he very seldom wrote a judgment, and very seldom gave many reasons. Lord Ellenborough afterwards said of him: 'No man ever hit so often, who always shot flying.' It is said indeed that at Nisi Prius he never brought a book with him into Court to refer to: the extent and arrangement of his legal knowledge needed no such assistance. His rapidity was marvellous: he would often decide from twenty to twenty-five causes a day, to the entire satisfaction of the parties.

On the other hand, he has left few of those masterly expositions of the general principles of the Law, which may be found in the judgments of his predecessor; and which Sir W. Grant bequeathed to the other branch of the profession.

He generally confined himself to stating the Law as he conceived it to be applicable to the particular case before him; adducing in support of his view such cases as were to be found in the books.

The tendency of his mind was to maintain what has been called the rigour of the Common Law, in opposition to Lord Mansfield, whose efforts had been directed rather towards a fusion of Law and Equity.

Of the faults which have been attributed to him on the Bench, the only one which seems at all worthy of notice is the imperfection of temper to which he was subject.

That this did exist, there can be no doubt; though it does not appear to have materially interfered with the dignified administration of justice.

But it sometimes rendered him capricious, and too

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little disposed to listen to the opinions of his brother Judges, when they disagreed with him.

His qualifications are thus criticised by Charles Butler in his Reminiscences: 'Much of the intuitive readiness which we have mentioned in the preceding article (on Lord Eldon), was possessed by the late Lord Kenyon, but the intermediate patient discussion was seldom exhibited by his lordship. The consequence was, that though the decision was right, the grounds of it were sometimes obscure, and the objections to it in the minds of his hearers were not always removed. This lessened the merit of his adjudications, but they are most deservedly held in the greatest respect, and considered of the highest authority.' [1]

The following amusing caricature is not far beyond the mark:—

'*Lord K–y–n.*

'If he be not great grandson to the peppercorn Llewellin, then know I noughte of the race of Antiente Britons—but let that pass. When a striplinge he did serve, by virtue of tripartite indenture, old Capias, a slie bag foxe of the Lawe hard bye the Wrekin: there picked he up the minor quirkes and quidlibets, but to the darker mysteries of the blacke Arte he entered a demurrer. From retailinge Lawe thus in small portions avoirdupoise, he became by degrees the greate dispenser of that wholesome drug to the King's wide commonweale! Still kepte he his ballance so nicelie poised, that yieldinge to no other weighte, a single scruple of his own conscience would turne the beame.

'Some liken him to a cholerique Chymiste, whose

[1] Reminiscences of Charles Butler.

virtue is tried by his own fire—but what heedes the outwarde wrathe of him who hathe a minde within pure as the mountaine aire which first he breathed.' [1]

Another is from the Law Magazine (1840):—

> On that high bench where Kenyon holds his seat,
> England may boast that Truth and Justice meet;
> But in a Northern Court, where Pride commands the chair,
> Oppression holds the scales, and judgment's lost in Ayr.

Lord Kenyon's private character has been very roughly handled. Lord Campbell has attempted to detract from his public worth by travestying his personal peculiarities. Many of the anecdotes told of him have been applied to every Judge since the days of Lord Hardwicke, and half of the remainder are absolutely without foundation.

Unfortunately the use of so large a supply of caviare in Lord Campbell's books has caused them to be largely read; and the anecdote has too often outlived the truth, which it was intended at best but to illustrate.

In truth Lord Kenyon was an unostentatious, simple-minded man, with no love for splendour or display. Parsimonious he was not. He lived as probably nineteen out of every twenty men lived towards the close of the last century. Without any attempt at grandeur, his friends were always welcome at his table, and scarcely a week passed during term time in which he did not entertain large parties of his brother Judges or Barristers.

It has been affirmed he was avaricious, because he died rich—but there is a degree of frugality which is not parsimony, as there is a degree of extravagance which ceases to be liberality.

[1] Vortigern and Rowena, a Comic Tragedy, page 70.

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'Tis he, methinks, in modest plenty finds
The true perfection of the golden mean,
Who moves not, by his niggardness, disdain,
Nor yet by splendid profligacy spleen.[1]

His savings were mainly invested in the purchase of land in Wales, where he succeeded in acquiring a fine estate in addition to the property he had inherited. The principle on which he proceeded is prefixed to the rental in his own handwriting.

'Neque majorem feci ratione malâ rem,
Nec sum facturus vitio culpâve minorem.'

It is said he frequently bought with very indifferent title.

Some one expressing surprise that he should run the risk of doing so, he replied that he cared nothing for title-deeds; that if he bought property, he would find law to keep it, and that after twenty years, occupation and possession would be title against the world.

A friend has assured me that some such doctrine as this was lately affirmed by no less an authority than Lord St. Leonards.

Nor was he the ignorant man that he has been described. He was not acquainted with Greek, but he was a very fair Latin scholar, though it must be confessed he did not show a very recondite knowledge of it, in the quotations he used in his judgments.

I do not find that he troubled himself at all with original composition, probably his time was too much occupied with his duties for this; but he was in the habit of making frequent notes of passages which struck him in his readings, and some of these, which

[1] Horace, Odes iii. 9.—W. T. K.

are preserved, show a much more extensive range of study than I should have imagined.

The following is the only specimen of versification that I can find :—

Lord Kenyon to his Wife.

My first—but how describe to thee
What I myself scarce know ;
The source of every joy to me,
Too oft, alas, of woe.

It is the gayest, saddest thing
That Heaven to mortals gave ;
It flatters while on fancy's wing,
It withers o'er the grave.

My next I've sought with care and pain
Thro' every realm to find ;
My search, alas, how very vain,
Its home is in the mind.

And like that fairy, modest flower
That courts the silent shade,
It flies the haunts of pomp and power,
Of fashion and parade.

Mary, may'st thou in whose fair breast
My whole with beauty glows,
Enjoy on earth that peace and rest
My whole alone bestows.

His character is thus very simply and eloquently described by one who knew him personally and owed much to his kindness :

'My uncle,' writes the reminiscent (now[1] upwards of ninety years of age), 'was about five feet ten inches, proportionately made, with a calm, kind countenance, excepting when his keen sense of justice made him appear severe ; but he was the same to peer or peasant. I read a letter many years ago from my father to a friend of his, in which he tells him his brother, Lord

[1] 1873.

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Kenyon, had been to fetch his own little girl (myself) home, after a few days' visit: my home being with them. Again, when I was about nine years, I remember my cousin rebuking me for calling Gredington mine, telling me Cefn was mine (then my father's home in Denbighshire), but Gredington was his, and my uncle's kind loving tone telling him "to let me call it so, he liked to hear me do so." These little incidents shew his kindness of heart, and also that all his servants lived with him many years. I much regret that I have not any of his letters: indeed he was not in the habit of writing much to any of his relations—my dear aunt generally did all that for him. He was always anxious to get over as much as possible before his long vacation in order to save expense to the clients. The late Lord Erskine (though so opposite in character) was his great friend, and as a child I well recollect his saying, "Now, Lord Kenyon, why did you stop me in my speech?" My uncle's answer was, "Because I feared that your eloquence and sophistry would lead the jury astray." Many people accused my uncle of being stingy, but that was not exactly the case. I suppose that any man, who had worked as hard as he had, would wish to obtain a recompence for the time spent, and the anxiety he had gone through.'

Of his kindness to rising young men of his own profession, I have already spoken. Lord Eldon, Sir W. Garrow, Sir Vicary Gibbs, Judge Allan Park, and many others, have borne willing witness to this trait in his character. The following is a kind letter to a young student desiring his advice:—

'Sir,—I am afraid you have concluded before this

time I declined to answer your letter. To say the truth, I had some suspicions that the letter did not come from a real person; but being convinced of that, I do not delay to write to you.

'I wish it was in my power to propose any plan you could rely on. The truth is, that in the study of the law a mass lies before the student enough to deter young minds; and they are left to hazard in which road to proceed.

'I would advise you to read very carefully Blackstone's Commentaries, and if you have the perseverance to go through it two or three times, I believe it would be of good use.

'After this you may perhaps, with some advantage, read Serjeant Hawkins' abridgment of Coke's Littleton, and then proceed to Coke on Littleton, accompanying that arduous task with reference to the abridgment I have mentioned, which will point out to you those points of this vast book which are rather obsolete.

'When you have done this, you will read the more modern reports, Sir J. Burrows', Mr. Douglas', Mr. Cowper's, and the Term Reports, and in Equity, first volume of Equity Cases, abridged, Mr. Cox's edition of Peere Williams, Hawkins' Reports in the time of Lord Talbot, and Precedents in Chancery.

'By the time this is done, you will be as good a judge as I am how to go on. If you mean to come to the bar, I would advise you to go to some *able* special pleader, but you will inform yourself who answers that description, as much ignorance now mixes in that profession.

'Conveyancing will be learned in the office you are

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placed in, and by referring to Horsman, or other books of precedent, and the Poor Law and Sessions business from Mr. Const's late book, and Burns' Justice.

'I heartily wish you success, and that you may deserve it by acting honorably in the prosecution of your profession.

'Your humble servant,

'KENYON.'

'*May 13th*, 1793.'[1]

His answer to a young man who wrote to ask for his support as a candidate for a seat in Parliament is not equally encouraging:

'Upon reflection you will not wonder that I was somewhat surprised at the honour of your letter.

'I am pretty far advanced in life, and your application is made on a subject which I consider of much importance.

'Public policy, morality, and religion are deeply interested in the choice of representatives in Parliament.

'I have not the honour of knowing you personally, or your character. I take it for granted that your character is without blemish. But if it were proper for me to act at all on this subject, it would be a duty incumbent on me not to take things for granted, but to make enquiry.

'It would be fit for me to ask what promise your byegone life has given of a proper conduct in future. If I learnt how your education proceeded after you left school, I ask whether you came from college accredited to the world, by the approbation of the

[1] Quoted from Townshend's Lives of Twelve Eminent Judges.

heads of the college, in regard to decency and morality if not with regard to learning; whether your pursuits there and since had been such as might lead me to suppose that your acquaintance with the Constitution and general system of the laws of your country would probably make you a valuable member of the legislature. A favourable answer to these, and some other enquiries, ought to precede any promise from a man who means to act right.'

The following anecdote has a stamp of authenticity about it:—

'I had been on a short visit to Richmond, and was returning to town on foot—a conveyance not inconvenient to a poor briefless barrister. An old coach came rumbling along and overtook me. It was one of those vehicles that reminded me of a duke or marquis under the old régime of France. Its coronet was scarcely discernable, and its gildings tarnished; I believe I might have looked rather wistfully at it, for it was a sultry, close day, when I perceived a head with a nightcap suddenly pop out from the window, and heard myself addressed by name, with the offer of a cast to London.

'It was Lord Kenyon, who was returning from his house at Marsh Gate; and I gladly accepted the invitation. He made the little journey quite delightful to me by an abundance of most characteristic anecdotes of the Bar in his own time, of Jack Lee, Wallace, Bower, Mingay, Howarth, the last of whom, he said, was drowned in the Thames on a Sunday water excursion. The good old man was evidently affected by the regrets which his name awakened, and they seemed

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the more poignant because his friend was called to his account in an act of profanation. "But it was the sin of a good man," he observed, "and Sunday was the only day which a lawyer in full business could spare for his recreation." Insensibly the conversation turned on Mr. Erskine. I know not what perversity of feeling came across me, nor do I recollect precisely what I objected to that eminent man, but it was a repetition of some of the ill-tempered animadversions of West[r] Hall that were then current. "Young man," said the Chief Justice, "what you have mentioned is most probably unfounded, but these things, were they true, are only spots in the sun. As for his egotism, which they are so fond of laying to his charge, they would talk of themselves as much as Mr. Erskine does of himself if they had the same right to do so. Erskine's nonsense would set up half a dozen of such men as run him down." This reminds me somewhat of times now long gone by, pleasing recollections.' [1]

Lord Kenyon's personal appearance is presented to us in two excellent portraits by Romney, and one by that faithful artist, Opie. They represent a spare man, of about five feet ten inches in height, with a high complexion and somewhat stern expression of countenance. His face indeed betrays most clearly two of the principal points of his character: acuteness and inflexibility. The eyes have a peculiarly shrewd expression, produced partly by a very uncommon droop of the upper eyelid: drolly caricatured in the Rolliad as 'the pert, no-meaning puckering of the eye.' The portrait by Opie is in the Master of the Rolls' robes, and the later one

[1] Clubs of London, quoted by Townshend.

by Romney in those of the Chief Justice. There is also a curious pencil sketch of Mr. and Mrs. Kenyon, one of the earliest works of Sir Thomas Lawrence.

An anecdote about these sketches is related in Williams' Life of Sir Thomas Lawrence, which, if it is true, affords an extraordinary instance of the precocity of genius. The painter's father, as is well known, kept a small inn at Devizes. 'In 1775, Mr., subsequently Lord, Kenyon arrived with his lady late in the evening at the Black Bear Inn at Devizes. They were on their way to Bath, and had felt the inconvenience of the heavy style of travelling in those good old times, and, as they confessed, they were not in the best possible humour, when Mr. Lawrence senior entered their sitting-room and proposed to show them his wonderful child. "The boy," he said, "was only five years old, but he could take their likenesses, or repeat to them any speech in Milton's Pandemonium." To that place the offended guests were on the eve of commending their host to go, and the lawyer's lips were just opened to pronounce the sentence, when the child rushed in, and, as Lady Kenyon used to relate, her vexation and anger were instantly changed into admiration. He was riding on a stick, and went round and round the room in the height of infantile joyousness. Mrs. Kenyon, as soon as she could get him to stand, asked him if he could take the likeness of that gentleman, pointing to her husband. "That I can," said the little Lawrence, "and very like too." A high chair was placed at the table, pencils and paper were brought, and the infant artist soon produced an astonishingly striking likeness. Mr. Kenyon now coaxed the child, who had got tired

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by the half-hour's labour, and asked him if he could take the likeness of the lady. "Yes, that I can," was his reply once more, "if she will turn her side to me, for her face is not straight." Our artist learned in good time not to speak so bluntly before ladies, but his remark produced a laugh, as it happened to be true. He accordingly took a side likeness of Mrs. Kenyon.

'About the year 1799 an intimate friend of Lady Kenyon's saw this portrait, and could distinctly trace a very strong resemblance to what her ladyship had been at the period when the likeness was taken.'[1]

I see no reason to doubt the substantial accuracy of this anecdote, for the sketches are marked on the back in Lord Kenyon's handwriting, 'Lawrence of Devizes;' and as the young painter left that town for Oxford, in 1779, he could not have been much older than is stated in the story at the time the likenesses were taken. The sketch of Lord Kenyon bears a very strong resemblance to one taken of him by a miniature painter about the same time. Woodcuts of these sketches, I imagine the earliest handiwork in existence of the great painter, are prefixed to this volume.

Lord Kenyon was simplicity itself in his dress. Indeed if the accounts of his contemporaries are to be believed, the simplicity amounted to absolute shabbiness. Erskine used to say he remembered his great-coat at least a dozen years. A witness who was under cross-examination before him as to his shoes, which had been stolen, smartly answered the question from the

[1] Williams' Life of Sir Thomas Lawrence, p. 41.

Bench, 'Were they at all like these?' with the telling remark, 'No, my lord, a deal betterer and genteeler.' [1] His habits were equally simple. He was an early riser, and the family were generally all in bed by ten o'clock. CHAP. XIV. 1802.

And here I must close this imperfect attempt to do justice to one whose memory I at least am entitled to honour and revere. I doubt not there will be some who will recognise in the portrait, however feebly drawn, signs of an honest, simple-minded character—'benevolent, communicative of good'—the material out of which have been fashioned alike the soldiers and sailors, lawyers and statesmen, who adorn the long roll of our English celebrities.

[1] Townshend.

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